

<p>AK</p>		<p>this document to address the process of redressing the past inequalities in the economic participation of South African citizens.</p> <ul style="list-style-type: none"> ➤ We recommend that the Charter document in the first paragraph of the preamble make specific reference to the alignment process required of an industry charter as set out in the B-BBEE Act, the B-BBEE Codes. <p>II. The Charter document makes no reference to the empowering supplier provisions¹, which in terms of the Codes are the ticket to trade and non-compliance with these provisions results in non-compliance of the scorecard for entities.</p> <p>III. We recommend that stylistically; reference to other Acts such as the Companies Act, the B-BBEE Act, etc. especially with regards to definitions, be referenced to specific sections in those acts rather than being spelled out in the document. This is because, when the specific Acts referenced are amended for any reason, it will become necessary to amend this Charter as well, whereas, if reference is made to specific sections, then any amendments to those sections will be effective without necessitating an amendment to this Charter document.</p> <p>IV. In respect of the preamble, the last paragraph on page 8 of this document seems to be defining the net value principle, if this is the case, we recommend that reference is made to Code Statement 100 of the Codes with a formula which allows measured entities to calculate the proportion of debt free equity that is allocated to black people and thus the benefit that flows to black people as a result of this.</p> <p>V. This Charter will result in unbundling of some existing transactions (some new, others recently re-financed) in terms of S2.11 (transitional arrangements), i.e. existing mining right holders have a maximum of three (3) years to comply with the provisions of the charter. Have the implications of the requirement</p>	
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<p>AK</p>		<p>to align been carefully considered by the DMR, is this not going to perpetuate the theme of the ultimate beneficiaries of B-BBEE continuing to be the deal makers and funders of these transactions rather than true empowerment for the beneficiaries? The implications of the unbundling process and reorganizing BEE deals will result in increased transactions costs –with financial institutions being the main beneficiaries – and no impact on the black intended beneficiaries. Furthermore, the beneficiaries would not have access to more diversified portfolios of mine ownership, and may be limited to only one. We are aware that a company can apply to the Minister for permission to construct a consolidated transaction, however, the permission is not fait accompli.</p> <p>VI. The fronting provisions in terms of the B-BBEE Act have not been referenced in this Charter. It is a requirement of a valid Charter to refer to the Act in this instance.</p> <p>VII. In November 2015, the mining sector was afforded a temporary reprieve from the requirement to align to the Codes, the BBBEE Act has a trumping effect in respect of any other law that is contradictory to the provisions of this Act. Section 3 (2) provides that in the event of any conflict between this Act and any other law in force immediately prior to the date of commencement of the Act, this Act prevails if the conflict specifically relates to a matter dealt with in this Act.</p> <p>VIII. "The exemption is intended to avoid creating uncertainty for the mining and upstream petroleum industries as to the application of the BBBEE Act, the DTI Codes, the MPRDA and the Mining Charter. The classification of the mines into EMEs (small), QSEs (medium) and Generic (big), has been aligned to the National Small Business Act. The Act defines the entities in terms of sectors, number of employees and the turnover per annum. This definition proved to be ineffective and thus the Codes came up with their criteria for classifying or categorizing entities. We would recommend a process similar to that applied in Section C (or whatever the correct section is where reference is made to Diamond Act).</p>	
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<p>MR</p>	<p>Definitions</p>	<p>BEE Compliant Company</p> <ul style="list-style-type: none"> ➤ Whereas this Mining Charter defines a B-BBEE compliant company as one that complies with the B-BBEE Act and the Codes, a mining rights holder and/or mining entity complying with this Charter will not in terms of the Codes be deemed to have satisfied the requirements set out in the Codes as critical measurements are not accounted for in this Charter, such as the Empowering Supplier Provisions. <p>Calendar Year</p> <ul style="list-style-type: none"> ➤ Clarity is sought in this regard to determine if reference to a calendar year in this charter relates to the measurement period of mining rights holders / mining companies? The Codes (draft verification manual) require that a measured entity's measured period be aligned to its financial year end, the Charter is therefore misaligned as some Charter participants may not complete their measurement periods on the basis of a calendar year, but rather on the basis of a financial year which may not match the calendar year. The misalignment of the period may result in increased costs of the verification and increased risk in respect of the credibility of data used to determine the scores for the mines where management accounts rather than audited financial results are used. <p>Effective Ownership</p> <ul style="list-style-type: none"> ➤ The Codes measure and define effective ownership in terms of the provisions of Statement 100 of the Codes which specifically measures voting rights, economic interest and Realisation in the hands of black people. The Charter on the other hand falls short significantly in determining the appropriate vehicles that may be used to carry out the objectives for ownership in particular, The term 'meaningful' is used instead, with no measurement criterion linked to it. 	
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		<p>Level of management</p> <ul style="list-style-type: none"> ➤ There is reference to applying the EE Commission's Economically Active Population (EAP) Targets to the Board and Executive Management levels of the Charter Scorecard. This may prove impractical simply because of the numbers of individuals who form part of boards. If alignment is the envisaged end goal, we recommend that application of the EAPs be limited to the senior, middle and junior management levels of management rather than the board and executive management levels. <p>Meaningful Economic Participation</p> <ul style="list-style-type: none"> ➤ This definition is difficult to measure as "meaningful" as opposed to meaningless participation by black people in the economy is not defined. The definition does not give rise to capital appreciation on assets / mining rights for participants, which is an essential measure of ownership as opposed to 'leasing'. It limits the participation of black people in the ownership of interests in the mining sector to voting rights and economic interest in the form of dividend flows and not specifically to the capital appreciation earned by black people through the servicing of any debts raised to acquire their interest. It also does not cater for the participation of black people who do not require up front funding, nor for those structures which are vendor funded with no upfront debt to the black shareholders. In essence, it is prescriptive, and may not achieve the desired outcomes. <p>Ministerial Skills Development Trust Fund</p> <ul style="list-style-type: none"> ➤ Does this fund already exist, if yes, what are its current objectives, how is it governed? Do the Santiago principles in respect of sovereign funds apply? Is there not a risk that the establishment of such fund 	
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		<p>may be seen as a duplication of efforts by participants in the sector as they are already carrying out initiatives aimed specifically at improving and increasing the skills quality and levels of the labour force in the sector? Is this not an additional tax burden on the mining companies, is the National Treasury one of the key stakeholders for this fund from a governance perspective?</p> <p>Social Development Trust</p> <p>➤ Does this fund already exist, if yes, what are its current objectives, how is it governed? Do the Santiago principles in respect of sovereign funds apply? Is there not a risk that the establishment of such fund may be seen as a duplication of efforts by participants in the sector as they are already carrying out initiatives aimed specifically at improving lives of members of communities where the mines are located? Is this not an additional tax burden on the mining companies, is the National Treasury one of the key stakeholders for this fund from a governance perspective?</p>	
MK	Objectives	It is necessary to obtain clarity as to whether the Charter's objectives are limited to the issuance of mining rights by the DMR specifically as the scorecard in the Charter, although mentioned to be aligned, still proves quite difficult to match to those issued for non-mining companies, i.e. With the absolute nature of the weightings in the mining sector scorecard, proportional achievements will not be taken into consideration, whereas the Codes allow for proportional weighting with appropriate points allocated to each of the scorecard areas. Is the DMR expecting mining companies to still produce generic codes certificates for other procurement processes with the private sector and other government agencies and departments?	
	Ownership	I. Alignment to the Codes has not been achieved in respect of the ownership provisions as the following critical facets of the Codes have not been addressed:	

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

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

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

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

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Procurement, Supplier and Enterprise Development	<p>I. The Codes measure the denominator against which procurement targets are weighted in terms of the Total Measured Procurement Spend (TMPS). This Charter on the other hand only makes reference to actual spend. This is misaligned to the Codes as specific non-procurement items and items procured from foreign domiciles may be included in the value of "actual procurement" which may disadvantage the mining entities under measurement for B-BBEE performance. We recommend that in the spirit of alignment with the Codes, the principles for measurement be considered.</p> <p>II. Specific reference is made to enterprise development and its measurement, i.e.(check the table on page 7&8 of the document). Is the charter intending on spending 10% of procurement in supplier development? The above targets, if interpreted correctly, will be taxing for the mining houses. The Mining Charter uses the word "preferably", and the question to be asked is: Does this make it is optional for mining houses to support Enterprise and Supplier development in the Reviewed Mining Charter? What is "BEE compliant Enterprise development"? This needs to be defined, to guide against ambiguous terms being used in the Charter. Additionally, this is a priority elements in terms of the Codes which needs to set out exactly how the mines should foster supplier development and enterprise development within the mining industry. These significant issues and definitions need to be adequately covered by the Charter, to fully align to the Codes.</p> <p>III. Multinational suppliers are required to contribute 1% of their annual turnover generated from local mining companies to a Social Development Trust fund to be established by the Minister of Mineral Resources.</p> <ul style="list-style-type: none">➤ Does this fund already exist, if yes, what are its current objectives, how is it governed? Do the Santiago principles in respect of sovereign funds apply?	
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		<ul style="list-style-type: none"> ➤ Is there not a risk that the establishment of such fund may be seen as a duplication of efforts by participants in the sector as they are already carrying out initiatives aimed specifically at improving lives of members of communities where the mines are located? ➤ Is this not an additional tax burden on the mining companies, is the National Treasury one of the key stakeholders for this fund from a governance perspective? 	
	Beneficiation	<p>1. Beneficiation is defined as the transformation of a mineral (or a combination of minerals) to a higher value product, which can either be consumed locally or exported. The term is often used interchangeably with mineral "value-addition" or "downstream beneficiation". It is necessary for the avoidance of confusion for the Charter to set out clearly the measurement principles to be applied for beneficiation. This Charter allows for the off-setting of the value/percentage achieved through beneficiation against the ownership scorecard, at a maximum of 11%. However, guidance is required in terms of the following:</p> <p>Calculation methodology based on the following possible examples in the Codes:</p> <ul style="list-style-type: none"> ➤ Cost of sales, ➤ Sale of assets, ➤ Equity equivalents 	
	Employment Equity	<p>i. There is reference to applying the EE Commission's Economically Active Population (EAP) Targets to the Board and Executive Management levels of the Charter Scorecard. This may prove impractical simply because of the numbers of individuals who form part of boards.</p>	

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

		<p>➤ How will the Charter treat the expenditure on non-employee individuals? The Codes allow for the 6% of expenditure to be expended on black employees, unemployed black people and black people employed by other companies.</p> <p>II. The Minister intends to establish a Ministerial Skills Development Trust fund</p> <p>➤ Does this fund already exist, if yes, what are its current objectives, how is it governed? Do the Santiago principles in respect of sovereign funds apply?</p> <p>➤ Is there not a risk that the establishment of such fund may be seen as a duplication of efforts by participants in the sector as they are already carrying out initiatives aimed specifically at improving appropriate skills development initiatives for employees of the mining companies?</p> <p>➤ Is this not an additional tax burden on the mining companies, is the National Treasury one of the key stakeholders for this fund from a governance perspective?</p>	
	Mine Community Development	<p>The Charter requires that mining entities spend a minimum of 1% of annual turnover on local community development. This target is quite steep in comparison to the target on socioeconomic development set out in the Codes, i.e. 1% of Net Profit after Tax. This target may prove to be unattainable for mining houses.</p> <p>➤ Is this not an additional tax burden on the mining companies, will the National Treasury be consulted to weigh in on the matter of deemed taxed levied on companies?</p>	
	Recognition levels	<p>Please advise on the compliance levels as level 1 is above 100%, and since there are no points for the different pillars, or bonus points, what is the relevance of the levels. If they intend using this for procurement purposes only, it should be clarified. Then also clarify how mining houses are to be measured for their suppliers other than DMR.</p>	

	Non-compliance	What does non-compliance mean and what does it mean in relation to a level 5? If a mine has anything less than a level 5, will that be viewed as non-complaint? Will the provisions of the Charter and the MPRDA kick in, rendering the mining company in breach of the MPRDA and subject to the provisions of Section 47 read in conjunction with Section 98 and 99 of the Act?	
26. the Centre for Environmental Rights (CER)	General comments	<p>I. While we recognise that section 100(2)(b) of the mining charter provides that: "The Charter must set out, amongst others how the objects referred to in section 2(c1), (d),2 (e),3 (f)4 and (i)5 can be achieved", we submit that the language of section 100 does not preclude the charter from dealing with other objects such as one referred to in section 2(h) – "give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic developments." This is particularly so if the object in question is on line with the stated mission of the mining charter, which is to promote transformation and give effect to section 9 of the Constitution in the context of mining.</p> <p>II. The disregard by the draft mining charter of the promotion of an environment that is not harmful to health or wellbeing, as guaranteed by section 24 of the Constitution, reflects a failure to recognise the reality of the disproportionate burden of environmental impacts borne by communities near mining operations. It is well established that the air and water pollution caused by mining results in detrimental health impacts on communities living around the mines, which are mostly black. The failure of the draft mining charter to address these disproportionate environmental and health impacts borne by communities is contrary to the requirements of section 9 (right to equality) of the Constitution, which provides that everyone in South Africa is entitled to benefit from the extraction of mineral resources; instead, the environmental and health costs are only limited to largely black communities living near and around the mine.</p>	

		<p>III. This inequality may be addressed by introducing, through the mining charter, programmes that will promote environmentally compliance. These programmes could include training of community members on public participation processes to facilitate meaningful consultation, and compulsory stakeholder forums so that communities are given an opportunity to express their environmental concerns to mining companies on a regular basis. This inequality can also be address by compulsory rehabilitation programmes to be undertaken by mining companies of historical environmental impacts caused by mining affecting communities.</p>	
Objectives		<p>I. The draft mining charter proposes to remove “promote sustainable development and growth of the mining industry” as an objective of the mining charter. We content that this removal is contrary to the vision of the mining charter which is “to facilitate sustainable transformation, growth and development of the mining industry”.</p> <p>II. Sustainable development is development that meets the needs of the present, without compromising the ability of future generations to meet their own needs⁶. Sustainable development is a principle that is introduced by the Constitution and more specifically when dealing with the use of natural resources (which include mineral resources). The principle was further entrenched and expanded upon in the National Environmental Management Act, 1998. The National Framework for Sustainable Development in South Africa, published by the then Department of Environmental Affairs and Tourism in July 2008, states that sustainable development is about enhancing human well-being and quality of life for all time, in particular those most affected by poverty and inequality.</p> <p>III. The preamble of the MPRDA recognises “...that minerals and petroleum are non-renewable natural resources”. Sustainable development is clearly an important principle that must not only be observed but</p>	

		<p>promoted by an industry such as the mining sector which is reliant on finite natural resources. The mining charter must promote efficient use of resources as well as intergenerational equity as some of the principles guiding transformation and the giving effect of section 9 of the Constitution.</p> <p>It is therefore recommended that the promotion of sustainable development and growth of the mining industry be retained as an objective of the mining charter, because its removal undermines the overall vision of the mining charter – to facilitate transformation and promote equality.</p>	
	Mine community development	<p>I. The CER welcomes the addition of 'meaningful consultation' as a requirement for meaning contribution towards mine community development. Unfortunately, the draft charter does not go far enough to ensure that communities and other interested parties are properly consulted on development decisions that will affect them, particularly by not providing a definition for 'meaningful consultation'.</p> <p>II. While communities are required to participate in consultation processes if they want a say, the draft charter does not make provision for communities and interested and affected parties to be provided with complete and accessible information prior to these processes commencing so that they can give valuable and well-considered inputs. There are also no measures that oblige mining companies to report back to communities and interested and affected parties or respond to concerns raised. Our experience is that mining companies treat consultation processes as box-ticking exercises whereby inputs from interested and affected parties and communities are simply ignored. This is only possible because 'consultation' – even 'meaningful consultation' is such a low standard for the permitting of mining.</p>	

		<p>III. It is submitted that the standard that ought to be applied is not merely consultation, but free, prior and informed consent (FPIC). The adherence to FPIC as a standard for mine community development will serve to reverse the injustice that was created by historical mining laws and practices on largely black mining-affected communities. FPIC will give communities a real voice on the negotiating table for community development projects they would like to get from the mining of their land.</p> <p>IV. Land owners and occupiers have no real bargaining position when it comes to mining on land that they own and occupy - mining can be permitted whether they like it or not. This means that communities that occupy the land on which mining is proposed have no real bargaining power in terms of the developments or benefits they want to get for their communities from the mine. The failure by the draft charter to include FPIC as a standard perpetuates the historical discrimination of historically disadvantaged people, and is thus in contravention of section 9 of the Constitution.</p> <p>V. It is therefore submitted that a definition of 'meaningful consultation' be included in the mining charter and the definition should include FPIC as a requirement for 'meaningful consultation'.</p>	
27. African Rainbow Mining (ASSMANG)	Definitions	<p>I. BEE compliant Company</p> <p>The exact level of BBBEE compliance of suppliers to the mines is not clearly defined in the Review Mining Charter (RMC). It is unclear if a level 5 or better level in the RMC - Annexure A, page 30, refers to the compliance by the mines only, or to suppliers and mines. It is recommended that the DMR to use the dti recognition levels to calculate procurement score of the mines, as this mechanism has proven to be effective to increase competition amongst suppliers to improve BBBEE levels. The dti levels also indicate</p>	

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	<p>levels of compliance that allow for comparison and avoid dissolution by suppliers that have to invest & restructure HR and its BEE programmes to become compliant.</p> <p>II. Enterprises development</p> <p>Enterprises that are owned or managed by black people and investments in enterprises that are owned or managed by black people, It is not prescribed in the RMC targets or measurement for procurement of mines. Although the definition of black owned enterprises is mentioned in the Reviewed Charter, procuring from black owned and black female owned suppliers is nowhere measured in the RMC scorecard. We recommend that DMR to apply a target for procurement from blackowned and female owned suppliers as follows:</p> <ul style="list-style-type: none">➤ Capital -procure 15% of capital goods from black owned suppliers.➤ Consumables - procure 40% of capital goods from black owned suppliers and 6% from black female owned suppliers.➤ Services - procure 40% of capital goods from black owned suppliers and 6% from black female owned suppliers. <p>III. Small Business</p> <p>The misalignment with the dti codes creates loopholes & is confusing. All industry charters and codes apply the EME, QSE and generic definitions. Also, in terms of the Small Business Act a business can have up to 200 employees, which will not promote small business development start-ups. We recommend that DMR to utilise the dti definitions and rules for EME, QSE and generic companies as suppliers. EME's &</p>	
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MK		<p>QSE's who are more than 51% black owned are automatically level 2, if they are more than 75% black owned, they are automatically level 1. Both must be conform to the ES definition.</p> <p>IV. Locally manufactured goods</p> <p>The local manufacturing definition is impractical as the SABS currently also approve imported items that conform to SABS standard and it will create an administrative bottleneck as most large suppliers have thousand of items on its catalogues. The BBBEE auditors already confirm the ES status of all companies. The ES definition will create jobs, increase local beneficiation and manufacturing and assist black owned enterprises. We suggest that the DMR to use the Empowering Supplier definition for all Capital, services and consumables suppliers that will create jobs and ensure localisation. Note: if a supplier fails to comply with the definition of ES, the BBBEE status/certificate of the supplier is worthless and cannot being counted by the mine on its scorecard.</p> <p>V. Locally based companies</p> <p>The benefit of local companies is continued in the definition of ES in the dti codes. It is suggested DMR to use the Empowering Supplier definition for all Capital, services and consumables suppliers that will create jobs and ensure localisation. Note: if a supplier fails to comply with the definition of ES, the BBBEE status/certificate of the supplier is worthless and cannot being counted by the mine on its scorecard.</p> <p>VI. Social Development Trust</p>	
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		<p>Oorganised business & labour will not be equipped to participate at ground level for community projects.</p> <p>We recommend that the DMR to Use dti rules and prescribe trustees & trust deeds that represent business and labour, to be approved by the Department of Economic Affairs in the relevant province.</p>	
PROCUREMENT, SUPPLIER & ENTERPRISE DEVELOPMENT	<p>I. Capital goods</p> <p>What is a manufacturing company? how will assembly count?, Does companies that have local production & that mix local content with imports , of which the Tier 2 suppliers cannot be determined, qualify? What about large value components imported into SA with local value add? what about current large capital suppliers that employees 1000's of people, of which products are too low volume for South African manufacturing. We recommend that the DMR to apply the ES definition, apply the 80% target for BEE Compliant suppliers (level 1-8), use the 15% and 6% targets for black owned and women suppliers and give bonus points for migrating from enterprise development to supplier development. Set a target of NPAT for supplier (2%) and enterprise development (1%) for the mine, as per the dti codes to fund the development of black suppliers, according to the dti benefit factor schedule.</p> <p>II. Consumables and Services</p> <p>We suggest that DMR to apply the ES definition, apply the 80% target for BEE Compliant suppliers (level 1-8), use the 40% and 12% targets for black owned and black women suppliers and give bonus points for migrating from enterprise development to supplier development. Set a target of NPAT for supplier (2%) and enterprise development (1%) for the mine, as per the dti codes to fund the development of black suppliers, according to the dti benefit factor schedule.</p> <p>III. Multinational suppliers of goods</p>		

<p>1117</p>		<p>Taking into consideration that if the number of multinationals increase that can contribute, the more funding will flow to communities & black owned enterprises. The definition of multinational must be clarified. The 1% must be on all sales from multinational suppliers. Are multinational suppliers that are BEE compliant exempt from the 1%, and at which level, taking the dti definition into consideration? We recommend that DMR to use the dti definition for multinationals which: "Means a measured entity with a businesses in the RSA and elsewhere and which maintains its international headquarters outside the RSA". DMR to apply the 3% of NPAT of the mine for ED (2%) and Supplier development (1%).</p> <p>IV. Mining right holders</p> <p>SABS will not have the capacity or know how to categorise the items, and the raw material analysed in the components and consumables for tier 1, 2, 3 suppliers. We recommend that DMR to use approved verification agencies to determine ES status of suppliers. Suppliers with no ES status do not count for the mines scorecard.</p> <p>V. The trustees of the Social development trust</p> <p>We recommend that the DMR must use rules that are already known in the industry and to apply dti definitions for trustees and governance, involve the Provincial Department of Economic Affairs to be part of trust.</p> <p>VI. Other Recommendations</p> <p>Not mentioned or defined</p>	
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MK		<ul style="list-style-type: none"> ➤ "Non-discretionary procurement expenditure" means expenditure that cannot be influenced by a mining company, such as procurement from the public sector and public enterprises; we suggest that the DMR to use rules that are already known in the industry and DMR to use dti prescription for exclusions and measurable procurement. ➤ "Enterprise development" means monetary and non-monetary support for existing or fostering of new HDSA companies in the mining sector of the economy, with the objective of contributing to their development, sustainability as well as financial and operational independence; We recommend that DMR to use dti rules of supplier 2% of NPAT and enterprise development 1% of NPAT. SD candidates must be supported for 3 years. ➤ percentage of samples analysed using local facilities, we recommend a prescribe minimum level of BBBEE compliance of analysing company and classify it as multinational prescribe level 4 compliance for local firms and 1% of sales for overseas testing companies 	
	MINE COMMUNITY DEVELOPMENT	<p>I. Annually contribute a minimum of 1% of annual turnover towards local community development & labour sending areas. We recommend that the DMR to apply 1% of NPAT for community development and specify a minimum 75% of beneficiaries must be African, coloured & Indian South Africans as per dti codes.</p> <p>II. Mine community refer to communities where mining takes place and labour sending areas. We recommend that DMR to apply 1% of NPAT for community development and specify a minimum 75% of beneficiaries must be African, coloured & Indian South Africans as per dti codes.</p>	

		NB. Check page 6 of the document with a suggested scorecard	
28. the Jewellery Council of South Africa ("JCSA")	Ownership	<p>The "once empowered always powered" principle should remain the guiding principle whereby effective control over one's business can be maintained through shareholding. The principle has, despite its many critics assisted our members to be and remain compliant to this element of the Mining Charter. The proposal for 5% of the 26% shareholding to be transferred to ESOPS is far reaching and may prove to be insurmountable (see clause 2.1 (b)). It shall cause administrative delays with the transferring, not to mention the time that is usually spent on the drafting of shareholding agreements. The administrative costs and time that will be spent on the "special purpose vehicle" as proposed in the Government Gazette under discussion at clause 2.1(d) shall especially in the short and medium term cause a further administrative burden on the B.E.E partner. In practical terms further auditing costs are a reality which shall be at the expense of the B.E.E partner.</p> <p>We propose that the business model which allowed for trusts to be used as a vehicle should be provided more time to establish progression and effectiveness as a specific purpose vehicle through which compliance can be attained and maintained by our members</p>	
	Preferential Procurement	<p>Our members believe that the target of 70% for locally manufactured consumables is achievable. The proposed target under capital goods may be challenging. This is due to significant technological advances in the development of manufacturing equipment overseas and which is not locally manufactured.</p> <p>A further issue is the maintenance of B.E.E accreditation of suppliers that fall outside the scope of our members' control. We propose that latitude be granted to our members in this regard and that specific thresholds that are reasonable and attainable for our members be negotiated.</p>	

	Employment Equity	<p>The vast majority of our members are micro or small business enterprises and do not include the management levels.</p> <p>Even those members that may be considered to have large corporate structures do not include the management levels as proposed. There are also an insufficient number of competent blacks in present positions whereby attainment of the envisaged targets will be reasonable. Our members shall not for the aforementioned reasons be able to comply, but every attempt shall be made for a revision of the different management structures amongst our large members.</p>	
	Non-Compliance	<p>The non-compliance of any of the ring-fenced components, in terms of the proposed Government Gazette, shall mean non-compliance of all the elements. This will have an enormous effect on the continuation of already developed jewellery businesses in South Africa and the knee jerk reaction (that is anticipated) would be the closure of many members who shall not qualify for their respective licenses due to non-compliance.</p> <p>The JSCA herewith propose its policy plan in broad terms which may become the basis upon which a Jewellery Charter can be established.</p>	
29. Dlamini Attorneys MK	Definitions	<p>I. The BEE term</p> <p>The term BEE used throughout the Draft Mining Charter is not properly articulated and defined. It is imperative that the term 'BEE' used and defined in the Draft Mining Charter, be properly defined in alignment with the BBBEE Act, as the former term is superseded by the term 'BBBEE' which is expressed in the BBBEE Act.</p> <p>II. Black People</p> <p>➤ Is defined as "a generic term which means Black Africans..."</p>	<p>I. Input on the alignment of the definitions of BEE and Black Africans or People with BBBEE Act have been noted.</p> <p>(ii) Noted supra.</p>

<p>NR</p>	<p>We recommend that any reference made to "Black Africans" in the definition thereto, be aligned with the proper definition of 'Black people' in the BBBEE Act. The BBBEE Act expressly embraces "Africans" and not "Black Africans" as it is used in the Draft Mining Charter. Therefore, we propose a reconstruction of the definition to give effect to the above, as it may possibly suggest a complete new definition, which is not defined and/or included in the BBBEE Act.</p> <p>III. Community and Mine Community</p> <p>The definition seems to make reference to the definition of 'Traditional community' defined by the Traditional Leadership and Governance Framework Act 41 of 2003 ("Governance Framework Act"). As a result, if this is the intention of the legislature to define such communities where the majority of mining activities are undertaken, then it is prudent for the Legislature going forward, to align the definitions accordingly, to reduce uncertainties. We are of the view that the drafting of the Legislature, does not provide an ambiguous interpretation of the expression 'community', if the intended beneficiaries of these mining activities are traditional communities as defined and existing in the mining industry.</p> <p>IV. Effective Ownership</p> <p>The definition should take cognisance of BBBEE transactions that are not only found in commercial arrangements, but largely in the mining industry where Black people seem to own shares (in particular black people who would own ordinary shares, and their counterparts would own preferent shares with guaranteed economic benefit and control of the day to day activities of the mining activities). Accordingly, those shares are not linked to any guaranteed economic interest or direct control of the mining entity. We recommend that the current definition of Effective ownership be articulated to link and include black ownership, in a</p>	<p>(iii) Noted definition of Community will be aligned with that of other relevant legislation. Department is to align the Reviewed Mining charter with the SLP which also calls for the employment of the workers from the mining host countries.</p> <p>(iv) Noted the input on the difference between ordinary and preferent shares and their implications and we will consult relevant section(s) within the department for further inputs.</p>
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M4		<p>company that has proven and shown a guaranteed economic interest, from short to medium term returns and direct control in the mining entity.</p> <p>V. Meaningful economic participation</p> <p>What is presented in the definition is more like an ideal transaction and not realistic. No mining company will pay dividends in the event where expenses exceed income, particularly in the first few years where the mining company does not breakeven, given the depressed commodity prices that seem to be dominating the mining industry.</p>	<p>(v) Noted and department consider the aspect of payment of dividends carefully.</p>
	Ownership	<p>I. Sub-Clause (f)</p> <p>The provision of clause 2.1(f) suggests that "black empowerment stake" or shareholding in a mining company must create an SPV to manage 26% of the shareholding. We do not agree with this provision for the reason that, since 26% of the shareholding emanates across as the absolute maximum. We propose that the expression "at least" be inserted before the number 26%.</p> <p>II. Sub-Clause (j)</p> <p>This provision of Clause 2.1(j) is ambiguous and clarity is sought as to whether all the black shareholdings of a mining entity should form one SPV.</p>	<p>i. Department disagrees with this input in that the draft clearly that 26% is minimum not as an absolute maximum as indicated here.</p> <p>ii. Noted and the department is to relook at the proposal for the establishment of the SPV visa vie other alternatives.</p>
	PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT	<p>I. Capital Goods, Consumables and Services</p> <p>It may be difficult for the Minister to support the provisions of this clause since local content models fall within the ambit of DTI, which are extensively regulated. The Legislature has to engage with the DTI and look into the mining industry value chain and declare certain services within the industry, as designated sectors as the</p>	<p>i. Input noted and the Department will highlight the same during its engagement with the DTI on the</p>

		DTI is placed to regulate and monitor designated sectors. This shall enable the Minister and/or the Legislator to align the local content models products and services required in the mining industry, with the established DTI's requirements, which shall curb the effect of reinventing of the wheel.	alignment of the two transformation tools.
	Mine Communication Development	<p>I. We are mindful of that figures that were produced for the 2014 assessment report, which provide that the mining entities have dismally failed to contribute the minimum threshold of 1% of their annual turnover to local community development. We recommend that continuous failure to achieve the set target must be linked to a penalty in the form of a royalty payable to the affected community, equal to an amount of 1% of the mining entity's annual turnover, payable six months after annual returns.</p> <p>II. We further recommend that community development be enhanced by a recruitment target set to employ a certain percentage of labourers from the community in which the mining activities are undertaken. The labour requirements must not only be confined to unskilled labourers or low skilled labourers, but rather to all levels of employment across the mining industry.</p>	<p>Noted and department agrees that companies failure to reach set targets must be addressed through penalties as espoused in the Mining industry's legislative framework.</p> <p>The department will align the Reviewed Draft Mining Charter with SLP document which calls for the employment of the people from the mines' host communities amongst others.</p>
30. Geological Society of South Africa MK	Definitions	<p>I. Core Skills and Critical Skills</p> <p>Geological skills need to be added to the definition of Core Skills and Critical Skills to align with the Department of Home Affairs definition as gazetted in notice 37716, June 3, 2014. Most resource management and ore body modelling in the mining environment, along with many other functions, are performed by SACNASP-registered earth scientists and this needs to be recognized in the Charter.</p> <p>II. Ministerial Skills Development Trust Fund</p> <p>Skills development and professional growth is a key issue to the GSSA membership. Therefore, more information is required around the management of the funds in the proposed Ministerial Skills Development</p>	<p>I. Noted, department will consider aligning the definition of Core and Critical Skills is aligned with the relevant legislation to include "Geological skills".</p> <p>II. Department agrees with this input and it will engage all relevant</p>

		Trust Fund. This is an area of concern as it might have a substantial impact on the professional development activities carried out by the GSSA.	stakeholders for inputs on the establishment of such a fund.
	Procurement, Supplier and Enterprise Development	<p>This section largely talks to enterprise and supplier development, which has been lacking in the mining industry. The GSSA strongly believes that large mining companies, suppliers, and analytical laboratories should create or develop locally empowered companies to supply services and goods.</p> <p>The DMR also needs to recognise that targets for Capital Goods and Consumables acquisition may be too onerous in the mining industry. For example, one piece of equipment required in a small operation may cost many tens of millions of Rands and may well not be manufactured locally or by BEE-compliant companies based elsewhere. Some specialist consumable goods may also fall into this category. More flexibility is required; it might not be viable to set up a local company to produce capital goods for which there may be limited demand. In these cases flexibility should be applied as long as the proper process has been followed to attempt to procure locally first.</p>	<p>Department agrees with this input and it will relook at the inputs from the stakeholders on the targets set on procurement element.</p> <p>Department notes proposals on the flexibility relating to the local production of goods in the form of exemptions.</p>
	Human Resource Development	<p>Recognition of the role that various professional societies (including the GSSA) have in skills development needs to be addressed; those efforts should be explicitly included as possible beneficiaries in Sub-clause (b) in particular. Professional societies provide important technical training in a variety of fields at low cost to members and need to be recognized in the Charter.</p> <p>Currently this clause seems biased toward state owned enterprises. The GSSA is of the opinion that this should extend to a wider audience inclusive of all stakeholders, such as universities and particularly the private sector, if growth in the economy is to be achieved. It must be noted that private sector companies are major</p>	<p>Department appreciate the input on the availability of professional bodies offering skills development trainings. However, disagrees with the individual naming of such institutions or bodies in the Mining charter since they may change or cease to operate at any given time.</p> <p>Where possible trainings will be provided by State Own Institutions created for that purposes and work together with private</p>

		<p>drivers in Research and Development and there should be a drive to enhance cooperation between the private sector and government in this, while not detracting from the creation of private sector service provision.</p> <p>It is further suggested that The Honourable Minister needs to consider the inclusion of a "Skills Transfer" clause as a matter of urgency. The mining industry should have effective skills transfer and training mechanisms because it will be natural for some South Africans to feel isolated by the proposed amendments.</p>	<p>institutions to enhance their efficiencies.</p> <p>Department agrees with input on the skills transfer and training mechanism.</p>
	Sustainable Development	<p>Clause 2.8 of the 2010 draft, namely 'Sustainable Development and Growth of the Mining Industry', has been removed from the new draft, and 'sustainable development' has been removed from the definitions section. 'Sustainable development and growth' has also been removed from the objectives section. This is concerning because it leaves open the possibility of managing mineral resources and reserves with less regard to long term health and growth of the industry. It may directly and negatively affect the employment and career paths of those earth scientists involved in those aspects of the sector (for example environmental geologists, geohydrologists, mineral resource managers). Deletion of the clause increases the possibility of poor long term resource management, which could result in greater volumes of stranded or sterilized resources.</p>	<p>Department notes the concern on the removal of the element on Sustainable development. However, it should be noted that certain functions have to be transferred to other relevant organs of the State for their best implementation and to avoid duplication of tasks.</p>
<p>31. Mining Equipment Manufacturers of Southern Africa</p> <p>M.K</p>	Procurement	<p>I. The Draft Charter's usage of the term "locally manufactured capital goods" is welcome, but the definition, "Locally manufactured goods: refers to goods manufactured within the Republic of South Africa", fails to set a minimum South African content (local value added in the goods supplied).</p> <p>We would suggest that this be aligned with international norms at 65% SA value added.</p> <p>II. The Draft Charter's alignment with the national Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003) and its Codes of Good Practice (DTI Codes) for supplier companies is welcome, however the maintenance of the "multinational supplier" loophole (1% of sales value instead of BBBEE compliance)</p>	<p>I. Noted the Department will reconsider the definition as suggested.</p> <p>(ii) The Department disagrees the 1% requirement from Multinational suppliers to</p>

	<p>appears to be unnecessary, because the foreign suppliers can now be BBBEE accredited and ranked, as per South African suppliers.</p> <p>Accordingly we strongly recommend that the “multinational suppliers” loophole be removed as it is now superfluous (move to national BBBEE Act/Codes).</p> <p>III. The Draft Charter obliges a mineral right holder to “procure a minimum of 60% locally manufactured capital goods from BEE compliant manufacturing companies”. However, it is unclear at what level (status) “BEE compliant” is set at. Given that the Draft Charter attempts to advance both our national transformation and local economic activity imperatives, maybe we should combine the two into a single index for procurement?</p> <p>Consequently we would recommend that the eligible procurement metric be the product of the BBBEE Procurement Recognition Level (% as per the BBBEE Act) of the supplier and the value of the South African content (local value added) of the goods supplied (this would encourage both transformation – BBBEE – and local content – value added)1.</p> <p>IV. The procurement targets are set at 60% for capital goods, 70% for consumables and 80% for services in the Draft Charter. However, a long-established miner will have had the advantage of developed local supplier networks built over many years, whilst a new mining investor will need time to develop BBBEE/local suppliers.</p> <p>Consequently, we suggest that the procurement targets be staggered over the life of the mining right (30y): (a) targets to be met from year 1 to 10 of the right (current targets); (b) enhanced targets from year 11 to 20 of the right; (c) further enhanced targets from year 21 to 30 of the right (right holders that converted from old order rights would be assessed from the commencement of the old order right- see Annexure B).</p>	<p>be retained and implementation tools provided.</p> <p>(iii) The concern noted, the Department will consider prescribing the requisite levels in terms of the BBBEE Act and the Dti Codes.</p> <p>IV The 3 years transitional period is sufficient.</p>
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		<p>V. The Draft Charter states that for capital goods procurement "30% of the above 60% must preferably be given to small business development which are BEE compliant, a minimum of 10% of the 30% must be reserved for BEE compliant enterprise development." It is unclear what "BEE enterprise development" means here, and how it is different from small businesses that are BEE compliant.</p> <p>Maybe "BEE enterprise development" should be rephrased as "10% of the 30% must be reserved for enterprises that are greater than 50% Black owned".</p> <p>VI. Finally, on procurement, the development of Black suppliers and SA local content would be greatly assisted by the establishment of a national "Mining & Processing Procurement Database" that would provide suppliers with a good idea of the local market, particularly for imports replacement.</p> <p>Accordingly all mining rights holders should contribute to a national mining procurement database with their annual purchases data (item, quantity, imported value & local content value) to be managed by an entity designated to do so by the Minister³. This data would greatly facilitate the establishment and development of Black suppliers and local content.</p>	<p>V Noted, to further consult with the Dti.</p> <p>VI Noted, the Department to consider the submission in the review exercise.</p>
	Human Resources Development	<p>I. The Draft Charter acknowledges that the mining industry is "knowledge-based". However, the mining supplier industry is even more knowledge intensive, particularly capital goods, and is critically dependent on core skills and R&D for its survival. Thus the obligation of a 5% corporate spend by mineral rights holders on skills development is a necessary requirement for the survival and growth of both the mining industry and its linkages sectors.</p> <p>We would recommend that the obligation be refined to finance core and critical⁴ skills development, literacy and numeracy, rather than skills development in general.</p>	<p>I. Noted, the Department will consider the submission in the review exercise.</p>
	Research & Development (R&D)	<p>I. R&D is essential for the survival of the mining/processing industry, but even more so for the backward and forward linkages sectors. Since democracy, national R&D capacity in mining technology development has</p>	<p>COMRO, is being revived through the operation Phakisa process. The submission is</p>

		<p>been devastated and is now but 10% of its former strength, particularly since the demise of COMRO and the relisting/exit of several Mining Houses.</p> <p>Consequently it is strongly recommended that the obligation to fund local R&D should not be diluted into the HRD obligation (5% of payroll, under 2.5 (b)), but should be a separate obligation for all mining rights holders to spend at least 2% of turnover (sales) on R&D in South Africa. The determination of what qualifies as eligible R&D could be done by the existing Treasury Committee for the R&D Tax Allowance (Income Tax Act, Section 11D).</p>	supported and will be taken into account in the review process.
32. Mineral Law in Africa (MLIA)	Preamble	<p>I. "Historically disadvantaged" vs "black"</p> <p>It is in this context, in particular the obligations expressed in section 100(2)(a) of the MPRDA that the current intended revisions to the Draft Charter are undertaken. The MPRDA's own statement of objective, however, refers to "historically disadvantaged persons", rather than "black" persons, as does the Mineral and Petroleum Resources Development Bill of 2013. Preference given to the descriptor "black", rather than "historically disadvantaged" is most likely intended to align the Charter with the Broad- Based Black Economic Empowerment Act 53 of 2003 ("BEE Act"), as the Draft Charter states.</p> <p>Recommendation: For the descriptor preferred in the Draft Charter to be altered as intended, a legislative change to the MPRDA is needed, in that references in the MPRDA to "Historically disadvantaged persons" must be amended to denote "black persons" only, or the definition of "historically disadvantaged persons" must be amended to express the same intention.</p>	Submission is noted, the Department is aligning to the BBBEE Act and the Dti Codes. Amendments will be made to the Principal Act to ensure alignment of definitions and concepts as suggested.
	Definitions	<p>I. Community</p> <p>The Draft Charter defines "community" and "mine community", but it does not define "host community". "Community" or "host community" generally refers to a traditional community coordinated in terms of</p>	i. Submission noted, the Department will reconsider the

	<p>custom and having certain rights or interests to the land where mining takes place. "Mine community" is much broader and in terms of the definition in the Draft Charter it refers to the communities where mining takes place and labour sending areas.</p> <p>Recommendation: It is advisable to clarify whether "community", when used without the accompanying descriptor "mine" in the Draft Charter should be understood in the broader sense as described above, or in a narrower sense. It may be necessary to distinguish by referring to "host communities" as opposed to "mine communities".</p> <p>II. Effective Ownership</p> <p>The BEE Act does not contain a similar definition. In terms of the generic BEE scorecard, ownership and management control are two separate elements. In the Mining Charter, management control is measured as part of Employment Equity. In terms of Companies Act 71 of 2008, a clear distinction is drawn between the management of a company and the ownership or shareholding in a company. This definition of "effective ownership" conflates the elements of ownership and management control by equating "effective ownership" to i.e. meaningful participation in management control.</p> <p>Recommendation: It is recommended that the relation between "effective ownership" and management control is dealt with explicitly in the definition, and that meanings are aligned with the terms used in the BEE Scorecard and the Companies Act.</p> <p>III. Meaningful economic participation</p> <p>It is not clear why provision is made explicitly for BEE entrepreneurs, especially in the light of the criticism levelled against BEE for creating a black elite at the cost of other black persons and communities.</p>	<p>definitions of "community" and "mine community".</p>
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		<p>Recommendation: If provision is made for "BEE entrepreneurs" as a category of beneficiaries, qualifying criteria should be stipulated to provide clarity as to who will be regarded as a BEE Entrepreneur. This category of beneficiaries should not benefit from mining activity at the cost of the workers or communities directly affected by the same activity.</p> <p>IV. Trust funds</p> <p>The definitions of "Ministerial Skill Development Trust Fund" and "Social Development Trust" allude to the creation of funds, without that there are any further reference to legislative provisions determining how such funds are / will be governed.</p> <p>Recommendation: It is recommended that these definitions be completed by including reference to the legislative provisions in terms of which the mentioned funds are (to be) established and governed.</p>	<p>The submission is noted and the Department will consider removing reference to management control in the definition of effective ownership.</p> <p>The submission is noted, the definition of BEE entrepreneur to be provided.</p> <p>The funds will be created in consultation with National Treasury in terms of the Trust property Control Act. The definitions will be improved accordingly.</p>
	Policy shift manifested in Draft Charter	<p>We are concerned about the consequences that the shift from "socio-economic" empowerment to "black economic" empowerment will have for transformation in the mining industry.</p> <p>Recommendation: The Department is urged to rethink the implications of its policy shift away from socio-economic empowerment and towards black empowerment. The interest groups that stand to be most severely affected by such a policy shift are the ones most directly affected by mining activity, namely the people living around the mines ("mine communities").</p>	Reference to Socio to be retained.
	Employment Equity	<p>I. These figures aspire to reflect the racial demography of the country. In this respect, the quota-initiative is laudable. We submit, however, that casting these figures in absolutist terms for immediate compliance is unrealistic at present. Requiring absolute and immediate compliance at these levels may also result in inadvertent and unintended discrimination; and may be detrimental to the mining industry and the country's economy.</p>	To consult with the Department of Labour.

		<p>Recommendation: To avoid the creation of an artificial skills shortage, a more proactive model for promoting affirmative action should be devised: one that rewards and incentivizes companies that creates shared-value approaches towards affirmative action; and one that allows for a versatile recruitment process that is free from discrimination in the employment context. One possibility would be to reward levels of affirmative action employment by scaling BEE status levels according to the employment demography within the company at each level of management. Introducing such a model would require more far-reaching legislative changes than what can be achieved in the Charter.</p> <p>II. We strongly support the sentiment in the Charter (section 2.5) in favour of human resource development which is integral to social transformation. The country's resolve to promote BEE will be successful if there are sufficiently developed skills to allow for meaningful empowerment.</p> <p>Recommendation: We urge the drafters of the Charter to strengthen requirements on mining companies to support education and skills development, especially within the "mine" communities - those around their mines. This could be done by further incentivising the formation of educational trusts and incentivising private sector support of especially secondary and tertiary education initiatives. Such support could take the form of scholarships and sponsorships, or support in developing specialized training that would serve both the mining sector and the communities affected by mining.</p>	
MK	Ownership	<p>Recommendation: It is recommended that the Draft Charter incorporates guidelines on what fair allocation of the shares to workers, black entrepreneurs and communities must entail. It is further recommended that the allocation of the black entrepreneurs' share be regulated more precisely. Furthermore, to ensure the efficacy of the envisaged ownership deals, the Mining Charter should engage with the provisions of the Companies Act and stipulate more precisely how certain of the alterable provisions of the Companies Act should be addressed in order to assure that the objectives of the Mining Charter are achieved.</p>	<p>The Department will reconsider alternative models for fair allocation of shares, however the 5% as mining shares to each of the three categories will be retained.</p>

	Mine Community Development	<p>The terminology here does not align with the definitions provided: does the Draft Charter here refer to (traditional) communities or mine communities as defined? Reference to "local" community here is confusing and inconsistent.</p> <p>Recommendation: The text of the Draft Charter needs to be revised to achieve consistency between definitions and terminology actually employed.</p>	Submission noted, the Department will revisit the definitions and terms used to ensure alignment.
33. South African Diamond Manufacturer s' Association (SADMA)	Part B: Application of the Mining Charter for Permits/Licences Granted under the Precious Metals Act, 2005, and the Diamonds Act, 1986, as amended	<p>Clause 2.8 is impermissibly vague and create uncertainty about whether or not the Draft Reviewed Charter is, in fact, intended to apply to the downstream diamond industry and, if so, how. This vagueness and uncertainty is potentially unconstitutional. The rule of law, a foundational constitutional principle enshrined in section 1(c) of the Constitution of the Republic of South Africa, 1996, which is justiciable, provides that laws must be stated in clear and unambiguous terms, and that they should appropriately constrain and guide the exercise of administrative discretion. Clause 2.8 of the Draft Reviewed Charter, as it stands, is vague, creates regulatory uncertainty as to whether the downstream diamond industry falls within its ambit, and, depending how it is interpreted, may be in conflict with the Diamonds Act and/or lead to uncertainty as to how the Regulator should go about its decision-making process when considering applications for licences and permits.</p>	The concerns are noted and he Department will consult with the SADPMR.
	Policy considerations	<p>It is, furthermore, submitted that there are good policy reasons why the drafters of the amendments to the Diamonds Act in 2005, which inserted section 5(2) into the Diamonds Act, left the application of the Mining Charter to the discretion of the Regulator, and did not seek to apply to Mining Charter "holus bolus" to the downstream diamond industry as a matter of course. It is SADMA's respectful submission that onerous legislative requirements imposed on the downstream diamonds industry have contributed in no small part to its decline. In fact, the legislative compliance requirements (including the discretionary application of the mining charter by the Regulator in terms of section 5(2) of the Diamonds Act) have significantly contributed to the industry's downward spiral. We are of the view that, while regulation is necessary in our sector,</p>	The concerns are noted and he Department will consult with the SADPMR.

		<p>unnecessarily burdensome regulation, such as the application of the mining charter, have proven to be counter-productive. The current onerous legislative framework has discouraged serious big investors and outright strangled small players. Matters of social importance that are covered in the mining charter are already covered by other applicable legislation. Issues of employment equity, procurement The end-goal should be to have an enabling legislative framework that encourages even a one-man, low-budget player to have a fighting chance to survive in this difficult industry, with the hope that the more people that participate, and the more people will find employment in the sector, which is obviously a positive for the economy.</p> <p>It is SADMA's submission that the non-discretionary application of the Draft Reviewed Charter to the downstream diamond industry (as potentially envisaged by Part B of the Draft Reviewed Charter) could be a mortal blow to an already beleaguered sector.</p>	
	Beneficiation	<p>Finally, it should be noted that Clause 2.3 of the Draft Reviewed Charter, which provides specifically for beneficiation, mentions that "the Mining Charter provides a mechanism for companies to offset up to 11% of the 26% ownership reserved for black people" without providing further detail, not least a formula by means of which a beneficiation offset may be calculated. It is submitted that clarity is required in this regard in order for there to be regulatory certainty going forward and to avoid the relevant provision falling foul of the rule of law, and its requirement for clarity and certainty, as discussed above.</p>	Mr Menoe to advise.
24. Rough Diamond Dealer's Association of South Africa	Ownership	<p>The "once empowered always powered" principle should remain in the guiding principle whereby effective control over one's business can be maintained through shareholding.</p> <p>Many of our large members do not have the sufficient cash flow available for the business model proposed under this element. Hence financing is already an issue for most of our members.</p>	Noted, alternative proposals will be explored.

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		<p>The proposal for 5% of the 26% shareholding to be transferred to ESOPS is far reaching and may prove to be insurmountable (clause 2.1 (b)). It shall cause administrative delays with the transferring, not to mention the time that is usually spent on the drafting of shareholding agreements.</p> <p>The administrative cost and time that will be spent on the "special purpose vehicle" as proposed in the Reviewed Mining Charter under discussion at clause 2.1(d) shall especially in the short and medium term cause a further administrative burden on the expense of the BEE partner.</p> <p>It is proposed that the business model which allowed for trust to be used as a vehicle should be provided more time to establish progression and effectiveness as a specific purpose vehicle through which compliance can be attained and maintained by our members.</p>	
	Preferential Procurement	<p>The proposed target under capital goods may be challenging. This is due to significant technological advances in the development of manufacturing equipment overseas and which is not locally manufactured.</p> <p>A further issue is the maintenance of BEE accreditation of suppliers that fall outside the scope of our members' control. We propose that latitude be granted to our members in this regard and that specific thresholds that are reasonable and attainable for our members be negotiated.</p>	<p>The foreign based manufacturing companies are to setup shop locally within the three years transitional period failing which the affected mining operation will be required to motivate to the Minister for procuring from foreign based manufacturing companies.</p>
	Employment Equity	<p>The vast majority of our members are micro or small business enterprises and do not include the management levels envisaged in the Reviewed Mining Charter. Even those members that may be considered to have large corporate structures do not include the management levels as proposed.</p> <p>There are also an insufficient number of competent Blacks in present positions whereby attainment of the envisage targets will be reasonable, our members shall not for the aforementioned reasons be able to comply,</p>	<p>The Department will consider exemptions for qualifying small enterprises including increasing the thresholds. Transformation is a national imperative and all stakeholders including government, organised business have an obligation to contribute to training and</p>

		but every attempt shall be made for a revision of the different management structures amongst our large members.	capacitation of Black people to take up the relevant positions in the mining operations.
	Non-Compliance	The non-compliance of any of the ring-fenced components, in terms of the proposed Reviewed Mining Charter, shall mean non-compliance of all the elements. This will have an enormous effect on the continuation of already developed diamond businesses in south Africa and knee jerk reaction would be the closure of many members who shall not qualify for their respective licenses due to non-compliance.	It is the government's intention that noncompliance with the ring-fenced elements is a breach of material conditions of the MPRDA and the Charter and section 93, 49, 98 and 99 of the MPRDA will be imposed irrespective of the size or nature of the offending operation.
35. South African Local Government Association (SALGA)	Policy and legislative/ General Comment	SALGA notes that one of the objectives of the Reviewed Mining Charter review process is to take into account the need to align and integrate government policies and legislation to remove ambiguities in respect of interpretation and to create regulatory certainty. The Reviewed Mining Charter, however, is limited in respect of the extent to which it takes into account existing legislation and policies regulating municipal planning processes which impact on certain regulatory requirements and processes within the mining sector. Specific reference is made to the recently promulgated Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA) and the Local Government Municipal Systems Act, 2000 (Act 32 of 2000) (MSA) which provide guidance on coherent approaches to mine community development.	The Department supports integrated approach to mine community development, in this regard the Charter requires meaningful consultation and co-ordination between mining companies, communities and local municipalities. The Charter does not have to make specific reference to the suggested municipal legislation. Right holders will interact with local municipalities in terms of their LED/IDP projects to ensure alignment.
	COHERENT PLANNING AND REGULATION FOR	I. The Reviewed Mining Charter is ambiguous and does not provide a clear directive in its proposition of meaningful consultation and coordination between mining companies, communities and local municipalities. The ambiguity of mining legislation creates regulatory uncertainty on how to align mining	i. Meaningful consultation will be defined in the regulations. It is the responsibility of the municipalities

SOCIO-ECONOMIC
IMPACT

companies' Social and Labour Plans (SLP) to the municipal Integrated Development Plans (IDP). No guidelines are given on how engagement with local government should take place or how SLPs should be aligned to IDPs. Many municipalities have experienced a lack of meaningful participation of mining companies in IDP formulation and implementation.

II. The Reviewed Mining Charter does not require the mining companies reporting on compliance to include consultation with local government. The monitoring of the Reviewed Mining Charter Scorecard does not provide for discussion with local government on the compliance of mining companies with the Charter objectives. The direct reporting line to the Department of Mineral Resources is an impediment to the effectiveness of socio-economic initiatives and presents challenges in cooperative governance. The current system has created an environment where there are inconsistencies with regards to which rules and guidelines mining companies should follow and which not follow. An accurate representation of the implementation of an SLP cannot be gained without taking into account the development plans and programmes of the municipality's entire municipal area. All monitoring and evaluation should require the joint monitoring of outputs and impacts of SLP and Mining Charter activities.

III. Moreover the language used in the Reviewed Mining Charter and the Scorecard does not communicate the importance of fulfilling the principles of the Charter in so far as mine community development is concerned. Mine community development, like the other indicators/targets listed in Section 2.10 of the Reviewed Mining Charter, requires 100% compliance because the impacts of this target span wider than the host mine community and labour sending area in which the mining companies invest. Moreover, the 100% compliance requirement speaks to the need to create sustainable settlements that are able to exist

to develop guidelines on how investors should contribute to development within the municipality. The guideline DMR will develop will be restricted to consultations with communities on aspects relating granting of mining rights.

ii. It is DMR's mandate to evaluate and monitor compliance with the Charter. DMR will devise means to ensure that local municipalities are engaged in evaluation and monitoring of compliance with the Charter. DMR to consider a measurement of the 1% in the Charter Score Card. (A tripartite structure to be explored). A proposal to have a memorandum of understanding with DMR, Municipality and the mining operation.

		beyond the life of the mine. The ambiguous wording in the Reviewed Mining Charter contributes to the limited impact of mining legislation on mine community development and local economic development.	III. The Department to engage with COGTA on the submission.
36. SwissCham Southern Africa – South Africa Chapter (SwissCham)		<p>I. SwissCham finds the envisaged retroactive application of the Charter worrying since it would result in a double jeopardy to our members who, under the previous BEE legislation, had made efforts in engaging empowerment partners.</p> <p>II. Acknowledging the South African Government's efforts in aligning the new Mining Charter with the B-BBEE codes, SwissCham is concerned that the fragmented nature of B-BBEE and consequent inconsistencies and/or overlaps create a regulatory environment with which Swiss firms find it difficult to comply.</p>	<p>i. The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.</p> <p>ii. The Department notes the concern regarding proper alignment and will further refine the draft Charter to address the concerns.</p>
37. ANGLO GOLD ASHANTI	Acknowledgement of units of	I. We note that the Reviewed Mining Charter is silent on the recognition of empowerment transactions concluded prior to the promulgation of the MPRDA in calculating offsets against the	i. The Department acknowledges the presumption against

MK	production ownership deals pre- and post-MPRDA and MINING CHARTER	ownership requirement, which was permitted under the Original Mining Charter 2004 and is presently permitted in the Current Amended Mining Charter 2010. Albeit for a prescribed period, the recognition for the conclusion of previous transaction is provided for under the Broad-Based Black Economic Empowerment Act 53 of 2003 and the BBEE Codes of Good Practice and we can see no justifiable basis for the exclusion of this provision from the Reviewed Mining Charter.	retrospective application of the law. This presumption is not absolute (refer to the AgriSA Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. Transformation is not an event but a process. The continued consequences in respect of empowerment transaction concluded prior to the promulgation of the MPRDA cannot be made to apply perpetually but must be appropriately timed taking into account the nature of the transactions concluded.
	CONTINUING CONSEQUENCES WHEN RENEWING MINING RIGHTS	i. Once again it should be made patently clear in the Reviewed Mining Charter that any new empowerment requirements in regard to ownership as encapsulated in the Reviewed Mining Charter should apply only to new applications and should not be applied to extensions of existing rights to accommodate new areas and renewals of current rights, as, once again, the imposition	i. The terms and conditions for renewal of mining rights will be negotiated at the renewal stage

		of the new requirements under the Reviewed Mining Charter to such extensions or renewals would give effect to retroactive or retrospective enforcement of legislation.	consistent with international best practice.
	FOREIGN ASSET BASE EXCLUSION FROM CALCULATING OWNERSHIP	I. BEE is a local South African requirement and thus has no bearing on foreign held assets. In order to calculate effective Black Ownership on South African domiciled multinationals, ownership held by Black people in an entity should be evaluated against the local operations and not the entire asset base, to avoid dilution of Black Ownership by foreign assets. Currently the DTI Codes of Good Practice only allows exclusion of foreign owned assets up to 40%, which effectively makes the base for local operations 60%.	I. Noted, the Department to consult with Dti/Mr Mabuza for a way forward.
38 AARD Mining Equipment (Pty) Ltd	Procurement, Supplier and Enterprise Development	I. Paragraph 2.2 provides for an obligation that the procurement policies of a Mining Right holder as well as its actual procurement "...is aligned to the following:". Thereafter follows three headings, namely "Capital goods", "Consumables" and "Services". Under each of these heading are paragraphs which are number (a), (b) and one paragraph is numbered (c), all which make it very difficult to refer to the different paragraphs of this element of the 2016 charter	
		II. The introductory paragraph of the procurement, Supplier and Enterprise Development in the 2016 Charter, little need to be said about the introductory paragraph save to point out that however laudable these aspirations may be, they completely ignore the fact that mining companies will always procure capital goods, consumables and services having regard to quality and price. For this reason, Mining Companies should, in circumstances where imports are in fact cheaper than locally produced items, be rewarded if they purchase from local suppliers. This incentive can take the form of higher aggregated score for procurement on the Scorecard to be attached to the 2016 Charter if the purchasing takes place from South African companies, even if they are more expensive. [Does this make sense?]	

MK		<p>III. Clause 2.2, if implemented in its current form, could furthermore actually reduce competition in that South African suppliers are allowed to deliver inferior products at higher prices rather than to encourage local suppliers to improve the quality of their products and price their products competitively. Mining Companies should furthermore be incentivized under the 2016 Charter, to fund research and development of capital goods and equipment for the mining industry to improve quality and competitive pricing.</p> <p>IV. What is required from mining rights holders is to ensure that their procurement policies and actual procurement is "aligned". In the online oxford dictionary the word "align" is said, amongst others, to "give support to a cause". That is the only meaning given by the dictionary that could possible inform the meaning to be ascribed to the word "aligned" in paragraph quoted earlier. Applying that meaning it would mean that a mining right holder must ensure that its procurement policies and actual procurement supports the causes set out in the Procurement, Supplier and Enterprise Development of the 2016 Charter. Clearly it would have been more precise merely to state that the policies and procurement must comply with the requirements sets out in the paragraphs that follow the introductory paragraph.</p>	
	Capital goods	<p>I. In paragraph (a) of the paragraph under the "capital goods" a Mining Right Holder is required to procure a minimum of 60% locally manufactured capital goods from "BEE compliant" manufacturing companies. Section 10(b) of the BBBBEE Act provides that an organ of state and a public entity must take into account any code of good practice issued in terms of section 9 in developing and implementing preferential policies. Minister of DTI issued a generic code of good practice which includes, as annexure to the regulations, various principles for measuring</p>	

MK		<p>"Enterprise Supplier Development" which refers to the purchase of goods from BEE compliant companies.</p> <ul style="list-style-type: none"> ➤ In regulation 8.1 of GN 1019 the BBBEE generic scorecard provides for "Weighting" amongst others, enterprise and supplier development at a level of 40 points. Depending on the number of points a measured entity scores, clause 8.2 provides for a measured entity to be provided a BBBEE status at various levels such as "level 1 Contributor and a Non-compliant Contributor" <p>The drafts-person of the 2016 charter chose not to use the defined term "BEE compliant company", He or She chose to use an undefined term "BEE compliant manufacturing companies"</p> <p>II. It is clear what exactly "locally manufactured capital goods" means. Does that mean that every component in the good referred to must be locally manufacture? If, for instance, motor vehicle which are purchased as part of a mining company's capital requirements are assembled in South Africa but contain some imported parts, does that satisfy this requirement? To what extent must a mining company enquire into the local content of the goods it purchases?</p> <p>III. Paragraph (b) under the heading "capital goods" also creates more questions than answers. It requires that a mining right holder must "preferably" purchase 30% of the 60% from "small business development which are BEE compliant". The requirement is ambiguous. Does it mean 20% of the total capital good purchased or a half of the 60% referred to in paragraph (a)?</p> <p>IV. The further requirement that "a minimum of 10% of the 30% must be reserved..." is equally ambiguous. Does that mean 3% of the total capital goods purchased or one third of the 30% referred to in the first sentence of paragraph (b)?</p>	
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MK		<p>V. This 10% must be "reserved for BEE compliant enterprise development". No-one can understand what that means</p> <p>VI. The word "preferably" expresses a wish rather than a peremptory requirement. Does that mean that a mining company can be compliant even if it does not procure the required percentages from BEE compliant enterprise development?</p> <p>VII. What is "small business development which are BEE compliant"? These words are also used the heading "Consumables" and "Services" in this element of the 2016 Charter but the meaning therefore is not explained anywhere in the document. Nor is there what one could refer to as a normal grammatical meaning that can be given to the term having regard to the context within which it is used. How can one, in any event, procure anything from something called "enterprise development"?</p> <p>VIII. What is the difference between "business development" and "enterprise development"? Although the term "enterprise development" is part of the name of Procurement, Supplier and <u>Enterprise Development</u> element of the 2016 Charter, the two concepts are not defined and only used in this element of the 2016 Charter. It is impossible to determine what is envisaged by the terms and how they differ.</p>	
	Consumables	<p>IX. The two paragraphs under "Consumables" are almost word for word the same as the wording discussed above under the heading "capital goods"</p> <p>X. The word "of" underlined in paragraph (a) in the quoted above was added to the same wording under the "capital goods" heading. This does not make any difference to the meaning. Also the word "preferably" was omitted from the similar wording in paragraph (b) under the "Capital goods".</p>	

MK		<p>XI. The words "A minimum of..." were added at the beginning of paragraph (b) under the heading "Consumable". That implies that the percentage of capital goods that must be "given to small business development.." under paragraphs (a) under the heading "Capital goods" must be exactly 30% while the consumables "given to small business development.." may exceed 30%.if this literal meaning is given to the absence of the phrase "A minimum of..." in paragraph (b) under "Capital goods" heading it would be absurd. This difference in the wording between the two paragraphs should probably be ascribed to bad drafting rather than a different intention by the draftsman of the 2016 Charter.</p>	
	Services	<p>XII. Paragraphs (a) and (b) are similar to paragraphs (a) and (b) under the headings "Capital goods" and "Consumables" save for the amendments necessary to distinguish companies from which services are procured from companies who manufacture capital goods or sell consumables.</p> <p>XIII. In fact, paragraphs (b) under the heading "Services" reads exactly the same as paragraph (b) under the heading "Consumables". It differs from paragraph (b) under the heading "Capital goods" in that paragraph (b) under the heading "Services" also commences with the phrase "A minimum of..." this difference was already discussed above.</p> <p>XIV. Paragraph (a), however, deviates from the provisions under the other headings in that it refers to "BEE compliant and locally based companies". What are locally based companies"? Are they companies who are registered in South Africa or could it include international companies who have local branches?</p>	
		<p>XV. The unnumbered paragraphs under this element requires mining right holders to "...verify local content for capital and consumer goods as provided for above with the South African Bureau of Standards". This must be done before the annual mining charter report is submitted to the DMR.</p>	

		The practicality of this requirement is questionable. Surely this verification "...before the annual mining charter report is submitted to the DMR..." it is too late. What if it turns out that the local content of the goods procured by the mining company is not what the mining company believed it was.	
39 SIBANYE GOLD LIMITED MK	2016 CHARTER ISSUES/ General	<p>I. The principle of the rule of law requires policy and legislative requirements to be drafted in such a manner that a person who is required to comply with such requirements is able to do so with certainty on reading of the document in which such requirements are contained. It is evident from a review of the 2016 Charter that many of the provisions contained in the draft 2016 Charter breach the principle of the rule of law as they are ambiguous and open-ended and create uncertainty regarding how applicants for rights or Holders (as defined in section I of the MPRDA) of rights are required to comply with the provisions in the 2016 Charter.</p> <p>II. The "Mission" of the 2016 Charter may be used to interpret the rather loose wording in the effective provisions of the document itself. The "Mission" reads as follows: "To give effect to section 100(2)(a) of the MPRDA, section 9 of the Constitution and harmonise Government transformation policies". A thorough analysis of the 2016 Charter shows that the document does not in fact give effect to section 100(2)(a) of the MPRDA but often contradicts that provision. Furthermore, rather than to give effect to section 9 of the Constitution, it appears as though the document entrenches discrimination through the removal of the definition of HDSA (as stated in the 2010 Charter) and the inclusion of the definition of "Black people" in its place, which is a far more limited definition than was previously provided. This cannot be the intention of the Minister and, therefore, it is proposed that the wording of the definition be reviewed to ensure a more appropriate and inclusive approach be adopted.</p>	<p>I. The Charter should be read with the MPRDA. Applicants of rights or right holders are required to comply with the provisions of the 2016 Mining Charter as outlined on the Charter.</p> <p>The definition of "HDSA" was removed in order to align with the BBBEEA, 53 OF 2003 by replacing it with the word "Black People". In terms of section 9 (5) of the Constitution of the Republic of South Africa discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair. In this context, discrimination to redress historical social and</p>

MK		<p>III. It must be noted that the word "community" is not confined to a group of Black people in the MPRDA, whereas in the 2016 Charter a community means a "coherent, social group of Black persons [our emphasis] with interest or rights in particular area of land which the members have or expert's communally in terms of an agreement, custom or law". The MPRDA specifically refers to a group of "Historically Disadvantaged Persons" and not to "Black persons". To amend a definition which occurs in the MPRDA by way of a subsidiary document such as the 2016 Charter is u/Ira vires the powers of the Minister. This amendment to the category of persons who qualify as Black people for purposes of the 2016 Charter read with the MPRDA has significant impacts throughout the document and, therefore, it is imperative that this definition is correctly worded.</p> <p>IV. A transitional period of 3 years has been provided to mining companies in order to review and align their empowerment structures with the prescribed terms stipulated in the 2016 Charter. This provision has a retrospective effect which will require every empowerment transaction which has been concluded to date to be unbundled or restructured to align with the prescriptive requirements set out in the 2016 Charter. Such an exercise will inevitably impact on the financial circumstances of a company, will no doubt deter further investment in the industry and will consequently erode shareholder value. The implications for a company, such as Sibanye, which either holds shares in a mining company or holds mining rights and prospecting rights will be significant in that the existing shareholders that had previously met the empowerment obligation will be required to dilute their shareholding in order to accommodate the prescribed structures set out in the 2016 Charter.</p>	<p>economic inequalities is allowed by using the word Black People.</p>
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MLK			<p>II. The Department notes the concern raised. However it should be note that we are in the process of aligning with the BBEEA, 53 of 2003 and the MPRDA will be amended also to align.</p>
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MK			<p>The Department disagree, a three year transitional period is sufficient for reviewing and aligning with the 2016 Mining Charter.</p>
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	Ownership	<p>V. The minimum threshold requirement of 26% ownership by Black people of shares in a company which holds rights remains the requisite threshold for purposes of compliance with the ownership requirement in the 2016 Charter, however, the manner in which mining companies are required to meet this threshold is far more prescriptive than in the 2004 and 2010 Charters.</p> <p>VI. the obligation on stakeholders to comply with the 2016 Charter is inappropriate in the circumstance given that a stakeholder is defined as "... a person, group, organisation or system which affects or can be affected by an organisation's actions which may relate to policies</p>	<p>V. The Department will relook into the proposal of whether the 26% of ownership of shares by black people will be on companies that holds rights or per operation before the finalisation of the 2016 Mining Charter.</p>

<p>NK</p>		<p>intended to allow the aforementioned to participate in the decision making in which all may have a stake". Clearly the requirements listed in paragraphs (a) to (k) of the Ownership element in the 2016 Charter which must be complied with, can never be complied with by the persons included in the definition of "stakeholders". One would expect that these requirements should be complied with by the applicant and/or the Holder of a right as they are the only persons whose compliance is measured and who is penalised for non-compliance pursuant to the provisions of the MPRDA. The compliance requirement cannot logically be extended to "stakeholders", as defined. If the intention is indeed to place such compliance obligation on a "stakeholder" (as defined), it is submitted that to hold a Holder of a right liable for the non-compliance of other stakeholders is a serious threat to the security of tenure of the Holder of a right. The effect would be the penalising of Holders of rights for events which they have no control over. These implications should be reassessed by the Minister.</p> <p>VII. Paragraph (a) of the Ownership element of the 2016 Charter The reference to the Companies Act in paragraph (a) of the Ownership element implies that the assets that must be transferred to Black people must be shares in a company. This ignores the fact that the previous Charters focused on the sale of mining rights (which is further contemplated in section 11 of the MPRDA) and not only shares. In addition, in terms of the MPRDA, mining rights may be held by joint ventures where the mining rights are held in undivided shares by several entities such as companies, close corporations, trusts or even by individuals. There is nothing in the MPRDA that prohibits such entities holding a mining right. It is submitted that it is ultra vires the powers of the Minister to try and regulate the manner in which mining rights must be held by way of a policy document, such as the 2016 Charter.</p>	<p>VI. The Department will relook into the definition as proposed.</p> <p>VII. The Department notes the concern. However, the MPRDA is subject to be amended to align with the BBBEEA. Section 37(2) of the deals with issued shares of a company and has nothing to do with the issue of the mining rights held by joint ventures or mining rights with undivided shares. However every mining right must</p>
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MK		<p>VIII. The requirement in paragraph (b) of the Ownership element introduces the new concept that the 26% ownership of mining assets (however defined) of the Holder of or applicant for a mining right may not conclude an empowerment transaction in terms of which the entire 26% is held by one Black person and furthermore, that all existing empowerment transactions in which a HDP held the 26% stake in the Holder of a right, would be required to dilute his/her shares and restructure to allow for the inclusion of an ESOP, a community and perhaps a black entrepreneur (however defined). The word "respectively" in paragraph (b) implies that each of the three categories of persons must hold at least 5% of the 26% ownership that must be allocated to Black people, in other words 15% in aggregate. The requirement that the 5% shares must be ". . . equally distributed amongst. . ." the three categories of persons implies that the allocations to each of the three categories must be the same. This prescriptive requirement may render an absurd and unworkable result and, therefore, stands to be challenged.</p> <p>IX. The requirements in paragraphs (f) and (g) of the Ownership element create far more questions than providing certainty with regard to the nature of the empowerment transactions that must be concluded by Holders of and applicants for mining rights. For instance: what is meant by the word "manage"? How does one "manage" various ownership stakes? Must the shareholding of all the empowerment shareholders in the SPV be proportional to their respective shareholding in the company that holds the mining right? Must this SPV, as the holder of all the various owners of shares in a Holder of a mining right, act jointly in exercising the voting rights which vest in the various owners as shareholders (or board members) of the Holder of the mining right? Not only does paragraph (f) of the Ownership element create confusion and uncertainty as pointed out above, it is immediately contradicted by paragraph (g) of the Ownership element which requires</p>	<p>achieve a minimum of the 26% ownership of black people and a three year transitional period has been provided for companies or mining right holders to align with the provisions of this Mining Charter.</p> <p>VIII. This is to allow transformation to be Broad Based as intended by the Mining Charter. The 5% shares equitably distributed amongst workers (in the form of ESOPs, black entrepreneurs, and the community respectively is just a minimum requirement. The Department disagree that this provision renders an absurd and unworkable result.</p> <p>IX. The Department will relook into the matter of SPV's and its management.</p>
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MK		<p>that "each empowerment transaction must register a SPV" It would now seem that it is required by paragraph (g) that, where more than one person holds a share of the 26% shares or other mining assets referred to in paragraph (a) of the Ownership element each one of the empowerment transactions in which the various portions of the ownership is transferred, must be held in a separate SPV. It is contended that this is unworkable and results in an absurd outcome.</p> <p>X. Paragraph (i) of the Ownership element seems to suggest that the sale of the 26% ownership of the Holder of a mining right must eventually be provided for in one transaction. Earlier in the Ownership element it was required that 5% ownership stakes must be transferred to the three categories of persons contemplated in paragraph (a) of the Ownership element, respectively.</p> <p>XI. The 2016 Charter now expressly inserts a provision which negates the "once empowered always empowered" principle. It is apparent from the 2016 Charter that the Minister does not agree with the "once empowered, always empowered" principle, as it has been colloquially referred to. It is proposed that all mining companies will be required to retain a 26% empowerment shareholding in order to remain compliant with the 2016 Charter, either by locking-in Black shareholders or by continually being required to conclude a replacement empowerment transaction every time a Black shareholder sells his/her shares in order to facilitate continued compliance with the Ownership element in the 2016 Charter. Failure to comply with this principle is an offence and will result in the company being non-compliant with the provisions of the MPRDA. It is submitted that such a construct leads to an absurd result as mining companies will be required to continuously conclude transactions with Black people (as defined) to satisfy the Ownership component of the 2016 Charter if, for valid commercial reasons, such as taking advantage of a</p>	<p>X. Paragraph (i) of the 2016 Mining Charter makes provision for consolidation of the empowerment transactions with the prior written consent of the Minister. The 26% ownership of the holder of a mining right must eventually be provided for one transaction and a three year transitional period has been provided for.</p> <p>XI. This provision is intended to ensure that companies remain compliant with the empowerment provision.</p>
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		commodity cycle, Black people were to sell their shares in those mining companies to realise value for their investment.	
	Procurement, Supplier and Enterprise Development	<p>XII. In paragraph (a) of the paragraphs under the heading "Capital goods" a mining right Holder is required to procure a minimum of 60% locally manufactured capital goods from BEE compliant manufacturing companies. It is unclear what a "BEE compliant manufacturing company" is as this term is not defined. It is not clear what exactly "locally manufactured capital goods" means either. Does that mean that every component in the goods referred to must be locally manufactured? Unfortunately this element in its current form, creates more questions than answers. Sibanye, through its current contracts with local suppliers could be compliant with this requirement, however, on the other hand, the DMR could be of the view that they do not comply. Such uncertainty needs to be clarified so as to ensure that it is not contrary to the rule of law and stands to be set aside in its current form.</p> <p>XIII. Paragraph (b) under the heading "Capital goods" requires that a mining right Holder must "preferably" purchase 30% of the 60% from "small business development which are BEE compliant". The requirement is ambiguous. Does it mean 20% of the total capital goods purchased or half of the 60% referred to in paragraph (a)? The further requirement that "a (sic) minimum of 10% of the 30% must be reserved ..." is equally ambiguous. Does that mean 3% of the total capital goods purchased or one third of the 30% referred to in the sentence of paragraph (b)?</p> <p>XIV. The word "preferably" expresses a wish rather than a peremptory requirement. Does that mean that a mining company can be compliant even if it does not procure the required percentages from BEE compliant enterprise development? It is uncertain what the term "... small business development which are BEE compliant" means. These words are also used under the headings</p>	<p>XII. The Department notes the comment.</p> <p>XIII. The Department will relook into the wording on percentages.</p> <p>XIV. The intention is to develop Small Businesses. However, DMR will relook into the wording e.g preferably.</p>

MK		<p>"Consumables" and "Services" in this element of the 2016 Charter but the meaning thereof is not explained anywhere in the document, nor is there a normal grammatical meaning that can be given to the term having regard to the context within which it is used. There is, therefore, a gap in the understanding of this element which requires clarification.</p> <p>XV. One of the paragraphs under the heading "Services", however, deviates from the provisions under the other headings in that it refers to "BEE compliant and locally based companies". It is uncertain what "locally based companies" are as this term is not defined? Are they companies who are registered in South Africa or could it include international companies who have local branches? Again uncertainty prevails. Furthermore, the requirement that mining rights Holders must only utilise South African based facilities for the analysis of its mineral samples "across the mining value chain" is vague. It is unclear what this means and how a mining company is required to comply with this requirement so as to avoid having its mining right cancelled or suspended in terms of the provisions of the MPRDA.</p> <p>XVI. Furthermore, reference is made to the Social Development Trust that was defined in the "Definitions" section of the 2016 Charter. The definition suggests that this fund has already been established. We are not aware of this fund ever having been established. Furthermore, the last paragraph under the Procurement, Supplier and Enterprise Development element of the 2016 Charter provides that the trustees of the Social Development Trust shall include stakeholders from organised business, organised labour and Government which suggests that the trust still has to be established. Also the definition also makes reference to "local communities" without explaining what that term means.</p>	<p>XV. The term Locally based companies has been defined. However the Department will relook into the definition so as to clarify whether these includes international companies who have local branches or only Companies registered in South Africa.</p> <p>XVI. The definition is clear. For all its mining production(s) Mining right holders must only utilise South African based facilities for the analysis of its mineral samples "across the mining value chain". The Department is of the view that there could be exceptions for this requirement and it will relook into the wording.</p> <p>XVII The Department will facilitate the establishment of this fund.</p> <p>XVII. The Department note the omission of the definition of local communities.</p>
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MK	Beneficiation	<p>XVIII. This paragraph repeats a provision in the 2010 Charter which deals with the Ownership element of that Charter, however, the following amendments have been effected since the 2010 Charter was developed, which amendments have clearly not been taken into account in the 2016 Charter. It is almost impossible to determine from the wording in the 2016 Charter, exactly what "beneficiation" means even read with the new definition of "beneficiation" in the MPRDA and the amended section 26 thereof. Even if it can be determined what "beneficiation" means for purposes of the 2016 Charter, there is no basis whatsoever either in the 2016 Charter or the MPRDA for determining the percentage that can be offset from the 26% of the ownership of "mining assets" reserved for "Black people".</p>	<p>XIX. Mr Menoe to advice.</p>
	Employment Equity	<p>XX. In the first unnumbered paragraph of the Employment Equity element of the 2016 Charter the Minister explains the purpose of the Employment Equity Act, 1988. That Act is, in any event, applicable to mining companies and, therefore, it is unclear why these provisions are being applied in this context again. It appears to be a duplication.</p> <p>XXI. Paragraph (a) then continues to provide that "/5% of which must be black female..." On a proper grammatical interpretation of the words "of which" one is led to the conclusion that 15% of the 50% black people must be "black female". One calculates this to mean 7.5% of the total number of people at Executive Management Level must be black females. The words "... in line employment active population (EAP))" in paragraph (a) qualifies the requirement that 15% of the 50% black people on the board must be black females. It is not possible to attribute any logical meaning to the quoted phrase. The phrase does not only appear in paragraph (a) under the "Executive Management" heading, but qualifies each and every target where black females are referred to under the subsequent headings under the Employment Equity element. It is therefore</p>	<p>XXII. The purpose of this paragraph is just to give a background on Employment Equity Act, 1998 and its applicability on this Mining Charter.</p> <p>XXIII. The Department note the concern on percentages and will relook into it.</p>

<p>11/17</p> <p>11/17</p>		<p>concluded that all the Black female targets must be "... in line with the employment active population ..." whatever that may mean. This phrase makes it impossible to determine how a Holder of a mining right must comply with the Employment Equity element of the 2016 Charter.</p> <p>XXII. Paragraph (b) under the heading Executive Management refers to "A minimum of 50% Black people proportional represented at the Executive Directors level a percentage of all executive directors. " It would seem that this paragraph differs from paragraph (a) in that paragraph (a) refers to all directors (executive or non-executive) on the board while paragraph (b) only refers to executive directors i.e. persons employed by the mining company on a permanent basis. Was this the intention of the Minister?</p> <p>XXIII. The further headings under the Employment Equity element of the 2016 Charter are similar and also contain the phrase "... as a proportional representative percentage of all..." Senior Management, Middle Management or Junior Management as the case may be. This phrase is vague and does not assist applicants with determining the meaning of the requirement and how applicants are required to comply.</p> <p>XXIV. The paragraph under the heading "Employees with disabilities" reads as follows: "(a) 2% of Black employees with disabilities as a percentage of all employees." The question is how does one calculate the 2%? Is it 2% of black employees or is it 2% as a percentage of all employees? The requirement is ambiguous and impossible of a proper understanding and application.</p> <p>XXV. The last heading under the Employment Equity element is the "Core and critical skills" which requires that all mining right holders "... must ensure that a minimum of 40% Black people are represented in the mining company's core and critical skills by diverting their existing pools." Does that mean that the mining company must ensure that 40% of all the people employed in what is</p>	<p>XXIV. The Department will relook into the wording.</p> <p>XXV. The Department will relook into the wording.</p> <p>XXVI. The Department will relook into the wording on percent and percentages.</p> <p>XXVII. The Department will relook into the wording on percent and percentages.</p>
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MK		referred to as the "... core and critical skills" must be Black people, or does it require that each different core and critical skills pool of employees must be occupied by Black people? There is no answer to this question nor can the answer be discerned from what is stated in the sentence quoted above. If the latter of the two possible interpretations (that each different core and critical skills pool of employees must be occupied by Black people) is the correct one, then one finds oneself confronted with the question, what if the pool of, for instance, metallurgical engineers (being one of the core and critical skills referred to in the definition of that concept) consists of only one person, how must a mining company then comply with this requirement?	
	Human Resource Development	XXVI. The Human Resource Development element of the 2016 Charter is aimed at compelling mining companies to contribute money to skills development. This is evident from the words in the last sentence of the introductory paragraph of the Human Source Development element, namely, "... the mining industry must . . ." which suggests that individual Holders of mining rights need not comply with this requirement but that the mining industry must be measured to determine whether there has been compliance with this element of the 2016 Charter. A heading "Human Resource Development" is included in the scorecard and then is qualified by the phrase stating that "this element is measured in terms of the national demographics as per the statistics of economically active population". It would seem, therefore, notwithstanding the indication that the "mining industry" rather than individual mining companies must comply with the Human Resource Development element of the 2016 Charter, the scorecard will measure compliance by mining companies. This contradiction must be addressed so as to provide clarity.	XXVIII. The Department note the concern. The wording will be revised to indicate mining rights and not mining industry.
	Mine Community Development	XXVII. Several concepts are referred to in this paragraph, namely "communities", "local municipalities" and "labour sending areas". Although the concept "communities" is defined, it is defined in a	

MK		<p>general manner and one cannot identify the community with which the "meaningful consultation" contemplated in the quoted passage, must be conducted. Not only is it difficult to determine what exactly a mining company must do to identify the persons with whom it should have "meaningful consultation and co-ordination", it also becomes clear in paragraph (a) under this element that "labour sending areas" are included amongst the "persons" where money must be spent on community development. , it may be argued that the content of the Mine Community Development element of the 2016 Charter is not enforceable against any mining company due to its open-ended and indeterminate content and, therefore, evident breach of the rule of law.</p>	
	Housing and Living Conditions	<p>XXVIII. All of the requirements under this heading are already included in the Housing and Living Conditions Standards for the Minerals Industry developed by the Minister in terms of section 100(1)(a) of the MPRDA. It is submitted, therefore, that there is no need to include this element in the 2016 Charter. It is not clear why these requirements have been repeated in the 2016 Charter.</p> <p>XXIX. The introductory phrase that states that "the contribution for home ownership options include but not limited to the following..... " can only be interpreted to mean that there is more than one option available and makes it impossible for the Holder of a mining right to know exactly what it must do to satisfy the requirements under this heading because it is left open ended by providing that the listed options are not the only requirements which need to be complied with. This means that it is left it open to the officials of the DMR to insist that any additional requirements be complied with. Such an open ended description of what a mining company must comply with does not comply with the rule of law and is, therefore, unconstitutional.</p>	<p>XXX. This is a ring-fenced element and cannot be dealt away with.</p> <p>XXX. The Department will relook into the wording.</p>

40 The United Nations Children's Emergency Fund (UNICEF)	Preamble	I. The preamble states "...a proliferation of communities living in abject poverty continues to be largely characteristic of the surroundings of mining operations" This raises the issue of mining companies' responsibility towards communities, children and youth when a mine closes. The social impacts of mine closure specifically on children should be addressed during operations and addressed appropriately through SLPs and other vehicles.	The Department will relook into the wording to align with the SLP.
	Vision	II. Include reference to the growth and development of South Africa including the mining industry, communities, children and youth.	(ii) The Department disagree. The vision is clear and straight forward.
	Mission	(iii) Reference should be made to the Sustainable Development Goals (SDGs). The most important SDGs which apply to the mining sector, are the following goals: <ul style="list-style-type: none"> ➤ Goal 1: End poverty in all its forms everywhere~ ➤ Goal 3: Ensure healthy lives and promote well-being for all at all ages~ ➤ Goal 4: Ensure inclusive and quality education for all and promote lifelong learning ➤ Goal 5: Achieve gender equality and empower all women and girls. ➤ Goal 6: Ensure access to water and sanitation for all. ➤ Goal 7: Ensure access to affordable, reliable, sustainable and modern energy for all. ➤ Goal 8: Promote inclusive and sustainable economic growth, employment and decent work for all. ➤ Goal 9: Build resilient infrastructure, promote sustainable industrialization and foster innovation. ➤ Goal 10: Reduce inequality within and among countries. ➤ Goal 11: Make cities inclusive, safe, resilient and sustainable. ➤ Goal 12: Ensure sustainable consumption and production patterns 	(iii) The Department disagree.

MK		<ul style="list-style-type: none"> ➤ Goal 13: Take urgent action to combat climate change and its impacts. ➤ Goal 15: Sustainably manage forests, combat desertification, halt and reverse land Degradation, halt biodiversity loss. ➤ Goal 16: Promote just, peaceful and inclusive societies. ➤ Goal 17: Revitalize the global partnership for sustainable development. 	
	Definition	(iv) The definition of "Mine Community" is not clearly defined as this can be open to interpretation which then further impacts on development for affected communities which may be excluded due to differing interpretation of Definition. UNICEF suggests that mines apply a Zone of influence definition which should be obtained through consultation, taking into account history, social and economic dynamics, and environmental impacts.	(iv) The comment noted. The Department will relook into the definition.
	Procurement, Supplier and Enterprise Development	<p>(v) Companies should take steps to ensure that child labour is eliminated throughout the supply chain by making a commitment to respecting and supporting children's rights and by establishing relevant management processes including relevant clauses in all contracts with suppliers and establishing monitoring and accountability mechanisms etc.</p> <p>(vi) The 1% of annual turnover which must be contributed by multinational suppliers of goods ought to be extended to multinational suppliers of services as well. In addition, the funds from the Social Development Trust Fund should contribute towards impactful and sustainable development of communities, capacity building and services which also specifies services for children, youth, mothers and families which includes but is not limited to early childhood development facilities, schools, healthcare facilities, safe play areas in communities. It is important that this is not only limited to infrastructure but also human capacity which includes but is not limited to early childhood practitioners, nurses, doctors, educators, social workers who should ideally be</p>	<p>V. The Department note the comment.</p> <p>VI. The Department note the comment.</p>

MK		<p>recruited from the community to create employment opportunities especially for young people and develop self-sustaining communities.</p> <p>(vii) Aside from the prescribed 1% of annual turnover, efforts should be made to invest in skills development (bursaries, scholarships and apprenticeships) of youth (with a gender equity lens to ensure that the gender gap within South Africa is addressed) with the vision of them eventually becoming employees in specialised roles such as mining engineers, geologists, mine managers or in other industries.</p> <p>(viii) The trustees of the Social Development Trust should include representatives from communities which will be recipients of these funds and social workers, com. Munity workers or other relevant child rights representatives to represent the interests of children and youth. A clear consultative engagement mechanism should be outlined/developed when engaging with the various stakeholders to enhance consultative engagement, collaboration and ensure that community priorities are effectively addressed.</p>	VII. The Department note the comment.
	Employment Equity	(ix) UNICEF supports the stated process to achieve employment equity especially the consideration to an increase of females in senior roles.	IX. Noted.
	Human Resource Development	(x) Efforts should be made to skill individuals who can provide essential services for children and youth and the communities which they live in, these services include health care, education (early childhood development through to adult education and training), protection services to ensure safety and security. A social worker or community worker or other relevant child rights representative should represent the interests of children and youth as a trustee of the Ministerial Skills Development Trust Fund.	(xi) The wording on the Trusts to be relooked into after consultation with DTI.

<p>mk</p>	<p>Mine Community Development</p>	<p>(xii) The contribution of companies towards community development should be made towards sustainable and scalable programmes and projects should the mine close it ensures longevity.</p> <p>(xiii) A "Child Friendly Communities" model needs to be developed and introduced to ensure that children and youth have access to sustainable essential services (health education, protection). Labour should be recruited from within the community and provided with skills development opportunities to avoid labour migration, disruption of the family unit and children and youth growing up with "absent" parents.</p> <p>(xiv) In the annual required minimum spend of 1% of annual turnover towards focal community development and labour sending~ areas we propose standardize consultative processes and the involvement of the community in decision making processes. This should also include the interests of the special care and support required for children and youth who come from these areas.</p> <p>(xv) The SLP is an important document which legally binds companies to their responsibility to communities and the integral role they play in mine community development, the SLP has not been included within the draft Reviewed Mining Charter and we propose that it be included in the Mining Charter with the following caveats:</p> <ul style="list-style-type: none"> ➤ A social worker or community worker or other relevant child rights representative should represent the interests of children and youth in the discussion, formulation and all steps towards developing an SLP. ➤ A standardised interpretation of the SLP requirements need to be developed to ensure uniformity, reduce ambiguity and improve effectiveness. This will negate conflicts between mining companies and government regarding their roles and responsibilities in 	<p>XII. The Department note the comment.</p> <p>XIII. This is not the responsibility for the Mining industry or holders, the Department of health and education are there to assists and they have their initiatives or programmes for the proposal made.</p> <p>XIV. Children and youth will benefit from the Local Economic development projects by mining right holders towards those communities.</p> <p>XV The Department will relook into the issue of SLP and Mining Charter where there is duplications and omissions.</p>
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MK		<p>the implementation of the SLP which should be linked to the Integrated Development Plans, developed every 5 years by the local municipalities.</p> <ul style="list-style-type: none"> ➤ Communities are rarely equipped for dialogue with mining companies and other stakeholders around SLPs. Community forums need to be facilitated by DMR and other government~ departments and ensure that communities are adequately resourced and suitably represented. Communities should be informed and involved in all steps of the mine community development process and their agreement should be sought as part of the process. ➤ Government needs to capacitate local government (municipalities) to manage local development. This includes the relevant human capacity and the revenue to implement which should be sourced from royalties and taxes paid by mining companies to government- this will need to be accompanied by effective financial accountability systems to prevent and negate mismanagement or theft of resources and limit political interference. ➤ Mining companies should develop and share SLPs with communities, the documentation on SLPs should be user-friendly and concise to adequately inform and update communities on all mine community development plans. This provision of information empowers communities and increases their ability to engage with mining companies and government in a more meaningful way. ➤ Mining companies should also collaborate with each other, especially when they are serving the same communities. 	
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MK		<ul style="list-style-type: none"> ➤ Localised sustainability reports need to be produced for sharing with communities, this will ensure transparency and accountability to local communities. This will empower communities to shadow monitor the SLPs. When done consistently, this will build trust between mining companies and communities which will result in increased collaborative arrangements for working towards common goals. ➤ A commitment to community development beyond legal compliance needs to be developed. Mining companies are guided by legislation to engage in social economic development programmes but it is imperative there be a strategic interest in community development in order to facilitate the country's transformation agenda. Outside of the mandatory SLPs, mining companies should continue to engage in strategic social investment initiatives or supporting the National Development Plan 2030 that addresses poverty, inequality and unemployment. 	
	Housing and Living condition	(xvi) UNICEF supports that family units should be maintained. Decent accommodation should be provided which meets the rights of mine workers and their families, especially children and youth in accordance with Chapter 2 of the Constitution. Housing goes far beyond ownership and companies must check and consider the conditions for children and young people in all housing solutions and models provided to workers, including the living out allowances model.	XVI The provision that Mining industry must maintain the occupancy of one person per room and maintain family units implies that children are included as they form part of that families.
	Reporting	(xvii) There needs to be a clear reporting timeline. <ul style="list-style-type: none"> ➤ The methodology for monitoring and evaluation needs to be fully outlined to remove any ambiguity which may exist, furthermore there needs to be a clear process to validate data and compliance to The Mining Charter and SLPs. 	XVII. The Department note the comment. <ul style="list-style-type: none"> ➤ Methodology for reporting will be put in place.

		<ul style="list-style-type: none"> ➤ The review of The Mining Charter and its effectiveness every five years should be incorporated. ➤ When reporting and monitoring compliance and reviewing the effectiveness of the Mining Charter the impact on children needs to be included as they are distinct stakeholders with special needs. 	<ul style="list-style-type: none"> ➤ The issue of SLP's and Mining Charter will be looked into. ➤ The Mining Charter makes a provision that it will be reviewed as and when required. ➤ This is implied.
	Applicability	(xviii) UNICEF supports the 100% compliance of housing and living conditions and human resources development. It is proposed that the 100% compliance to the rights of the child be included in accordance with Chapter 2 (28) of the Constitution and supplemented by the Children's Act.	XVIII. Transformation as envisaged by the Mining Charter will benefit to everyone living in South Africa.
	Non-Compliance	(xix) The specific period which renders a company non-compliant needs to be specified, which in terms of Clause 2.11 of the draft Review Mining Charter is a period of three years.	XIX The three year transitional period has been provided for companies to align with the Charter.
41. Tshipi é Ntle Manganese and Ntsimbintle Mining MK		I. The provisions on ownership are unduly prescriptive and do not take into consideration the commercial, social and other factors ordinarily taken into account in determining the most optimal manner in which to structure an empowerment transaction. We therefore submit that it is inappropriate for the structure of a transaction concluded for the purposes of the 2016 Charter to be prescribed by the Minister. Provided that the structure of the transaction makes provision for a minimum collective 26% ownership participation by empowered entities, the 2016 Charter should allow flexibility for empowerment transactions to be structured in a manner that is most optimal.	I. The Department note the comment.

MK		<p>II. The assumption that empowerment partners participate in a single structure i.e. the requirement for all BEE parties to form one SPV; and empowerment partners with differing interests speak with a single voice is impractical and unreasonable and will restrict the meaningful participation of black people in empowerment structures.</p> <p>III. The introductory paragraph refers to "mining assets" which was the focus of the 2004 Charter. This concept is, however, contradicted by several of the paragraphs listing the required attributes of the Ownership element in paragraphs (a) to (k) of the Ownership element. It appears as though the term "mining assets" is used interchangeably with the term shares in mining companies, which are separate concepts and should not be confused.</p> <p>IV. The concept of "meaningful economic participation" referred to in paragraph (a) of the Ownership element of the 2016 Charter and as defined in the 2016 Charter introduces inaccuracies and is open-ended as a result of the wording in the definition not actually defining the concept "meaningful economic participation" with sufficient accuracy to allow mining right holders and/or applicants for mining rights to determine what they must do to comply with this requirement.</p> <p>V. The distinction described in relation to "meaningful economic participation" ("BEE entrepreneurs", "workers (including ESOPs)" and "communities") is an important part of the Ownership element of the 2016 Charter where mining right holders or applicants for rights are now required to conclude transactions in which each one of these three categories of entities must be accommodated. We are of the view that this prescription is not necessary and creates structural difficulties.</p> <p>VI. Furthermore, it is obligatory for the BEE partners (as referred to in the 2016 Charter) to receive a cash payment or trickle dividend throughout the term of the transaction and to structure the</p>	<p>II The Department will relook into the matter of SPV's.</p> <p>III The Department will relook into the wording/concepts used.</p> <p>IV. The Department note the comment.</p> <p>V. The Department disagree.</p> <p>VI. The Department note the comment.</p>
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MK		<p>transaction with the assistance of a financial institution. This principle may be in violation of the Companies Act which requires that any distributions made to shareholders must be subject to certain requirements, including the requirements to meet solvency and liquidity provisions set out in the Companies Act. Therefore, mining companies cannot simply agree to pay a "guaranteed" dividend to certain of its shareholders. It also puts mining companies in the precarious position of having to part with working capital in economic conditions where cash preservation is critical to short and medium term survival. Tshipi appreciates that perhaps it was intended to ensure the encumbered shares still see benefits flowing. However, in Tshipi's case, its shareholding is unencumbered.</p> <p>VII. Also, the compulsory requirement that a mining right holder allocate 5% of its ownership to a community creates several problems, including the determination of the difference between a "community", "mine community" and "labour sending areas", as defined in the 2016 Charter. The ambiguity created by the definition of these three concepts is, therefore, applicable to the requirement that the 5% ownership must be allocated to a "community".</p> <p>VIII. The 2016 Charter is also proposed to apply retrospectively and mining companies are required within a 3 year period to align current empowerment structures with the provisions of the 2016 Charter. This is problematic for Tshipi for the various reasons stated above but in particular, despite Tshipi's extensive array of Black shareholders and broad-based shareholding structure, including, inter alia, women's groupings, communities, companies which lobby for communities surrounding the mines, those mining companies of which Ntsimbintle is a shareholder (and Tshipi itself), it will be required to restructure their shareholding to dilute the Tshipi stake in favour of a community trust, ESOP or BEE entrepreneur (however that may be defined). It will similarly be</p>	<p>VII. The Department t will relook into the definitions.</p> <p>VIII. The Three year transitional period is sufficient for mining companies to align with the 2016 Mining Charter. The empowerment transaction should be Broad-Based.</p>
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<p>MMK</p>		<p>extremely prejudicial to existing HDSA shareholders of Tshipi, which are extremely broad based and achieves in a significant manner the objectives of providing for meaningful and broad based objectives of transformation in the mining industry. It is unclear whether the implications of such restructuring has been contemplated by the Minister.</p> <p>IX. On procurement, Mining Companies have different operating models. Tshipi's operating model is based on the outsourced business model, as opposed to owner managed model. This means that Tshipi as the mining right holder appoints a mining contractor to conduct its mining operations under its supervision. This is a business decision driven by the onerous capital and operational risk on a new mining company. Tshipi therefore requests that such circumstances be taken into account by the Minister in relation to the procurement targets.</p> <p>X. We request that the Minister considers revising the Procurement targets downwards by at least 8%. The proposed targets for all categories, including the associated targets for small business and enterprise development, would be unachievable for the mining industry given, amongst other things, the limited scale of local suppliers.</p> <p>XI. The targets for the development of "BEE compliant" enterprises and small business participation are ambiguous. For locally manufactured goods, it is not clear if "30% of the above 60%" equates to 30% of all procurement or 30% of procurement from "BEE compliant companies" (i.e 18% of total procurement).</p> <p>XII. It is not clear if the definition of "locally manufactured in respect of capital goods is meant to apply to all areas of capital expenditure. For example, would capital project expenditure to build infrastructure be recognised? This is also an entre for fronting and corruption. A mining company's core business is not construction and therefore in order to manage its capital risk, it</p>	<p>IX. The Department note a comment.</p> <p>X. The issue of percentages will be relooked into.</p> <p>XI. The issue of percentages will be relooked into.</p> <p>XII. Clarity on this issue will be provided.</p>
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MK		<p>would usually opt for a turnkey solution, which means that all procurement is done by the company responsible for designing and building the plant infrastructure. This is the case with Tshipi as it is about to embark on the construction of its permanent secondary processing plant. This will entail a large two year capital investment but will have a material impact on our long term cost of production, which in prevailing market conditions represents Tshipi's only hope to keep the business sustainable for the future. Very high targets with respect to goods being locally manufactured will simply be passed onto the construction company who simply increases their price to mitigate their own perceived risk. This will have unintended consequences of putting mining companies' long term business under severe financial and sustainability risk. The Minister needs to consider these aspects when proposing targets under procurement.</p> <p>XIII. On mine community development, the proposed 1% of annual turnover target to be contributed towards local community development and labour sending areas will be detrimental financially for mining companies, particularly companies that have not been in existence for many decades and that have one mining operation such as Tshipi. This requirement can amount to a 1000% increase in the current commitment. We accordingly suggest that this requirement be restored to the prevailing status quo of 1% of the net profit after tax.</p> <p>XIV. On Housing and Living Conditions, all of the requirements under this provision are already included in the Housing and Living Conditions Standards for the Minerals Industry developed by the Minister in terms of section 100(1)(a) of the MPRDA ("Housing Standards Policy"). We therefore submit that the need to include this element in the 2016 Charter is not clear to us and will give rise to unintended ambiguities and inconsistencies.</p>	<p>XIII This is in line with Treasury Regulations, to confirm with Treasury.</p> <p>XIV The Department to revise Housing Standards Policy.</p>
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		<p>XV. The requirements of facilitation of home ownership do not take into account the economic impact thereof or whether employees would want to own homes near the mine. We strongly believe that employees have a voice in terms of whether they wish to rent or purchase homes (and in which locations) and rental options must also be considered carefully. Not all employees of mines consider home ownership in a mining area viable given that their families are often living in non-mining areas and demand pressure on current commodity prices means that the future of mining companies are uncertain.</p> <p>XVI. The financial impact and implications for mining companies to facilitate or guarantee loans for ownership options may be prejudicial and impact on the mining companies' ability to carry out investment as mining companies may require to reflect such obligations on their balance sheets. The financial and social impact of this proposal is not fully understood and we are of the view that prior to imposition of such targets, a full assessment by the Minister be conducted in this regard. The definitions for "interested employees" and "offering housing" have not been sufficiently defined.</p>	<p>XV. There are options provided and is not limited to home ownership.</p> <p>XVI The Department disagree.</p>
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DRAFT REVIEWED MINING CHARTER CONSULTATION ACTION PLAN
DEPARTMENT OF MINERAL RESOURCES
MINERAL POLICY AND PROMOTION BRANCH
JUNE/JULY 2016

STAKEHOLDER	DELEGATION	DATE	TIME	VENUE	STATUS
Government and Regulatory bodies.	Planning Monitoring and Evaluation (DPME).	8 th June 2016 (Wednesday).	09h00-12h00.	DMR Exco Boardroom.	Done.
	Department of Trade and Industry (Dti).	01 st July 2016 (Friday).	09h00-15h00.	DMR Exco Boardroom.	Done.
	SADPMR	4 th July 2016 (Monday).	10h30-16h30.	DMR Exco Boardroom.	Done.
	Junior/emerging Mining consultative forum.	5 th July 2016 (Tuesday).	09h00-16h30.	Collieries Training Centre, Emalahleni, Mpumalanga.	Done.
	CoM delegation.	8 th 2016 (Friday).	09h30-17H00.	DMR Exco Boardroom.	Done.
Chamber of Mines (CoM).					
Department of Labour.	Labour Delegation.	12 th July 2016 (Tuesday).	9h00-14h00.	DMR Exco Boardroom.	Done.
Solidarity.	Solidarity Delegation.	13 th July 2016 (Wednesday).	9h00-12h30.	DMR Exco Boardroom.	Done.
UASA.	UASA Delegation.	13 th July 2016 (Wednesday).	09h00-12h30.	DMR Exco Boardroom	Done.

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National Union of Mine Workers (NUM).	NUM Delegation.	14 th July 2016 (Thursday).	9h00-16h00.	Midrand.	Done.
DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE
1. Anglo American.	15 th July 2016 (Friday).	09h00-10h00.	DMR Exco Boardroom.	Done.	
2. Assmang Iron Ore/Atlas Copco SA/African Rainbow Minerals/Metso.	15 th July 2016 (Friday).	10h00-11h00.	DMR Exco Boardroom.	Done.	
3. Anglo Gold Ashanti	15 th July 2016 (Friday).	11h00-12h00	DMR Exco Boardroom.	Done.	
4. Gold One Africa	15 th July 2016 (Friday).	12h00-13h00	DMR Exco Boardroom.	Done.	
LUNCH	LUNCH	13h00-14h00	DMR Exco Boardroom.	LUNCH	
5. Afrisam.	15 th July 2016 (Friday).	14h00-15h00.	DMR Exco Boardroom.	Done.	
6. Ivanplats.	15 th July 2016 (Friday)	15h00-16h00	DMR Exco Boardroom.	Done.	
1. Ntsimbinhle Mining (Pty) Ltd/Tshipile Ntle Manganeese Mining (Pty) Ltd.	18 th July 2016 (Monday).	09h00-11h00	DMR Exco Boardroom.	Done.	
2. Sibanye Gold.	18 th July 2016 (Monday).	11h00-12h00	DMR Exco Boardroom.	Done.	
3. PPC	18 th July 2016 (Monday).	12H00-13H00	DMR Exco Boardroom.	Done.	

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4. Tronox	18 July 2016	14h00-15h00	DMR Exco Boardroom.	Declined.
DAY CLOSURE				
1. Zurel Bros SA.	19 th July 2016 (Tuesday).	09h00-10h00.	DMR Exco Boardroom.	Done.
2. United Nations Children Fund.	19 th July 2016 (Tuesday).	10h00-11h00	DMR Exco Boardroom.	Done.
3. Centre for Merchandise Mining system.	19 th July 2016 (Tuesday).	11h00-12h00	DMR Exco Boardroom.	Done.
4. Centre for Environmental rights.	19 th July 2016 (Tuesday).	12h00-13h00	DMR Exco Boardroom.	Done.
LUNCH				
13h00-14h00				
DAY CLOSURE				
5. Mining Affected Communities United in Action (MACAU).	19 th July 2016 (Tuesday).	14h00-15h00	DMR Exco Boardroom.	Done.
6. Serodumo SA Rona Community Based Organization.	19 th July 2016 (Tuesday).	15h00-16h00	DMR Exco Boardroom	Done.
7. Bulelani Mkhonto	19 th July 2016 (Tuesday).	16h00-17h00	DMR Exco Boardroom	Done.
DAY CLOSURE				
1. Bowman Gilfillan.	20 th July 2016 (Wednesday).	09h00-10h00	DMR Exco Boardroom.	Done.

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2. Webber Wentzel.	20 th July 2016 (Wednesday).	10h00-11h00	DMR Exco Boardroom	Done.
3. Centre for applied legal studies	20 th July 2016 (Wednesday)	11h00-12h00	DMR Exco Boardroom	Done.
4. Peta Attorneys	20 th July 2016 (Wednesday)	12h00-13h00	DMR Exco Boardroom.	Done.
5. Dlamini Attorneys	20 th July 2016 (Wednesday)	14h00-15h00	DMR Exco Boardroom	Outstanding.
LUNCH				
LUNCH				
6. Prof Henri Mostert, UCT, Mineral Law in Africa.	20 th July 2016 (Wednesday).	14h00-15h00	DMR Exco Boardroom.	Done.
7. KPMG Services (Pty).	20 th July 2016 (Wednesday).	15h00-16h00	DMR Exco Boardroom.	Done.
DAY CLOSURE				
DAY CLOSURE				
1. Empowerdex (Pty) Ltd	21 st July 2016 (Thursday)	9h00-10h00	DMR Exco Boardroom.	Done.
2. South African Institute of Race Relations (SAIRR).	21 st July 2016 (Thursday).	10h00-11h00	DMR Exco Boardroom.	Done.

3. Seesa	21 st July 2016 (Thursday).	11h00-12h00	DMR Exco Boardroom	Done.
4. SADC Youth in Mining.	21 st July 2016 (Thursday).	12h00-13h00	DMR Exco Boardroom	Done.
LUNCH				
5. South Africa-China Economy and Trade Associations (SACETA).	21 st July 2016 (Thursday).	14h00-15h00.	DMR Exco Boardroom.	Done.
DAY CLOSURE				
1. South African Institute of International Affairs (SAIIA).	22 nd July 2016 (Friday).	9h00-10h00.	DMR Exco Boardroom.	Done.
2. South African Local Government	22 nd July 2016 (Friday).	10h00-11h00	DMR Exco Boardroom	Done.

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Association (SALGA)	22 nd July 2016 (Friday).	11h00-12h00	DMR Exco Boardroom	Done.
3. Amplats	22 nd July 2016 (Friday).	12h00-13h00	DMR Exco Boardroom	Done.
4. South African Mining and Mineral Processing Capital Goods Manufacture (MEMSA)	22 nd July 2016 (Friday).	12h00-13h00	DMR Exco Boardroom	Done.
5. Black Business Council	22 nd July 2016 (Friday).	14h00-15h00	DMR Exco Boardroom.	Outstanding.
6. SA Chamber of Commerce and Industry	22 nd July 2016 (Friday).	15h00-16h00	DMR Exco Boardroom	Outstanding.
7. Geological Society of South Africa	22 nd July 2016 (Friday).	16h00-17h00	DMR Exco Boardroom	Outstanding.
8.				
DAY GLOSUNE	DAY GLOSUNE	12h00	DAY GLOSUNE	DAY GLOSUNE
1. AMCU	25 th July 2016 (Monday).	10h00-12h00	DMR Exco Boardroom	Done.
DAY GLOSUNE	DAY GLOSUNE	10h00	DAY GLOSUNE	DAY GLOSUNE
1. South African Capital	26 th July 2016 (Tuesday).	09h00-10h00.	DMR Exco Boardroom.	Done.

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Equipment Export Council (SACEC).	26 th July 2016 (Tuesday).	10h00-11h00.	DMR Exco Boardroom.	Done.	
2. South African Mining and Beneficiation Co-operatives (SAMBCO).	26 th July 2016 (Tuesday).	11h00-12h00	DMR Exco Boardroom.	Done.	
3. Deloitte	26 th July 2016 (Tuesday).	12h00-13h00	DMR Exco Boardroom.	Done.	
4. SAMDA	26 th July 2016 (Tuesday).	12h00-13h00	DMR Exco Boardroom.	Done.	
5. Vergenoeg Mining	26 th July 2016 (Tuesday).	14h00-15h00	DMR Exco Boardroom.	Done.	
6. Jewellery Council of South Africa	26 th July 2016 (Tuesday).	15h00-16h00	DMR Exco Boardroom.	Outstanding.	
7. Aardme	26 th July 2016 (Tuesday).	16h00-17h00	DMR Exco Boardroom.	Cancelled.	
DAY CLOSURE	DAY CLOSURE	15H00			
1. SADMA	27 th July 2016 (Wednesday)	09h00-15h00	DMR Exco Boardroom.	Done.	

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DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE
1. Standard Bank	28 July 2016 (Thursday)	11h00-13h00	DMR Exco Boardroom	Outstanding.	LUNCH
LUNCH	LUNCH	LUNCH	LUNCH	LUNCH	LUNCH
2. Nedbank	28 July 2016 (Thursday)	14h00-15h00	DMR Exco Boardroom	Outstanding.	DAY CLOSURE
DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE
1. Creative Voodoo Consulting	29 th July 2016 (Friday)	09h00-10h00	Gemstone Boardroom	Done.	DAY CLOSURE
2. Anglo American	29 th July 2016 (Friday)	14h00-15h00	Gemstone Boardroom	Done.	DAY CLOSURE
3. RMB	29 th July 2016 (Friday)	11h00-12h00	Gemstone Boardroom	Outstanding.	DAY CLOSURE
4. Lafarge	29 th July 2016 (Friday)	15h00-16h00	Gemstone Boardroom	Outstanding.	DAY CLOSURE
DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE	DAY CLOSURE
CONSULTATIONS COMPLETE	CONSULTATIONS COMPLETE	CONSULTATIONS COMPLETE	CONSULTATIONS COMPLETE	CONSULTATIONS COMPLETE	CONSULTATIONS COMPLETE

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CHAMBER OF MINES
of South Africa

**REVISED DRAFT SUBMISSION ON DMR DRAFT REVIEWED
BROAD BASED BLACK-ECONOMIC EMPOWERMENT
CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY**



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Proposed Scorecard

Reviewed Draft Mining Charter

Ownership

Procurement, Enterprise and Supplier Development

Beneficiation

Employment Equity

Human Resource Development

Mine Community Development

Housing and Living Conditions

Key Measurement Principles and Reporting Requirements

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- As a representative body of major and emerging mining companies in South Africa the Chamber takes the opportunity to make this revised submission to the DMR in response to the DMR engagement of 8 July 2016
- **Our understanding of the country's transformation imperative is informed by the following:**
 - The Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996)
 - MPRDA Act 2002 (Act No. 28 of 2002)
 - B-BBEE Act 2013 (Act No. 53 of 2003)
 - The National Industrial Policy Framework (NIPF)
 - The National Development Plan (NDP)
 - **Recognition of the role that industry needs to play to redress systemic inequalities and to meaningfully contribute towards the promotion of an inclusive industry and economy**
- **Our understanding of the alignment process is informed by the following:**
 - B-BBEE Act 2013 (Act No. 53 of 2003)
 - Government Notice 1047 OF 2015
 - *The use of a common scorecard by different stakeholders provides a basic framework against which to benchmark BEE process in different enterprises and sectors.*
 - *B-BBEE Sector Charter, gazetted in terms of **Section 12** of the B-BBEE Act*
(Source: BEE Strategy)

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Entity	Chamber Proposal Threshold	BEE Codes Threshold	National Small Business Amendment Act (26 of 2003)	Element
Exempted Micro Enterprise (EME) Emerging Miners	< R50 million	< R10 million	R0.20 million (Micro) R4 million (Very Small)	1 Priority element (Skills Development)
Qualifying Small Enterprise (QSE) Junior Miners	R50 million-<R300 million	R10 million <R50 million	R10 million (Small)	2 Priority elements (Ownership & Skills Development) plus 1 non-priority element
Generic Enterprise (GE) Majors	> R300 million	> R50 million		ALL

NB:

- The National Small Business Amendment Act (26 of 2003) defines business according to five categories established by the original act, namely, standard industrial sector and subsector classification, size of class, equivalent of paid employees, turnover and asset value – excluding fixed property.
- We propose that the classification of entities by turnover threshold as proposed be incorporated as part of the measurement principles in the Revised Mining Charter
- We propose that Sand and Quarries be classified as EME's

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2010 MC Elements	Weighting %
Reporting	Y/N
Ownership	Y/N
Housing and Living Conditions	Y/N
Mining Community Development	15%
Sustainable Development and Growth (i.e. Enviro, Health & Safety, R&D etc.)	29%
Procurement & Enterprise Development	15%
Employment Equity	16%
Human Resource Development	25%
Beneficiation	0%
Total	100%

Revised DTI Codes pillars	Weighting points
Ownership	25
Socio-Economic Development	5
Enterprise and Supplier Development	40
Management Control	15
Skills Development	20
Total	100

Reviewed Mining Charter Scorecard	Weighting %
Ownership	Y/N
Housing and Living Conditions	Y/N
Human Resource Development	Y/N
Mine Community Development	30%
Procurement & Enterprise Development	40%
Employment Equity	30%
Beneficiation	0%
Total	100%

COM submission proposal	Weighting points
Ownership & Beneficiation	25
Skills Development	25
Housing and Living Conditions	6
Socio-Economic Development	15
Procurement & Enterprise Development	40
Management Control	19
Total	130

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Pillar (Element)	Weighting	Total including Bonus Points
Ownership and Beneficiation [Priority]	25 (5)	30
Management Control (Employment Equity)	19 (0)	19
Skills Development (Human Resource Development) [Priority]	25 (5)	30
Procurement, Enterprise and Supplier Development [Priority]	40 (6)	46
Socio-Economic Development (Mine Community Development)	15 (5)	20
Housing and Living Conditions [Priority]	6 (6)	12
Total Points	130 points	157

NB:

- This is a proposed scorecard. Further engagements to be held to agree an industry scorecard and guidelines for measurement.
- Values in brackets indicate bonus points

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- Policy instruments to achieve broad based economic empowerment have not yielded desired outcomes-job creation:
 - Investment costs to set up manufacturing for capital goods not commercially sustainable
 - Limited volume of large body mining equipment in SA
 - Limited competitive advantage of old manufacturing plants abroad vs. a new plant
 - High current level of maintenance activities to save costs, thereby reducing volume of units
 - Fluctuating exchange rate which will compromise investment decisions
 - High import content of even locally based OEM's

However...

"In order to grow our economy, more enterprises are needed to produce value-added goods and services, to attract investment, to employ more of our people in productive activities" *South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment*

- Procurement, Enterprise and Supplier Development can be a catalyst for growth
 - Consumables and parts of the mining equipment can be produced economically in SA
 - SA industry has the expertise, funding support and baseline off take
 - The vision must be for a South African parts and consumables Hub for Africa and for operations of OEM locally and internationally (The Mining and Innovation Hub initiative is as an example)
 - Our expertise developed for local produced consumables and services can be exported

(Source: Johan Streuderst)

Proposed Procurement Scorecard



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

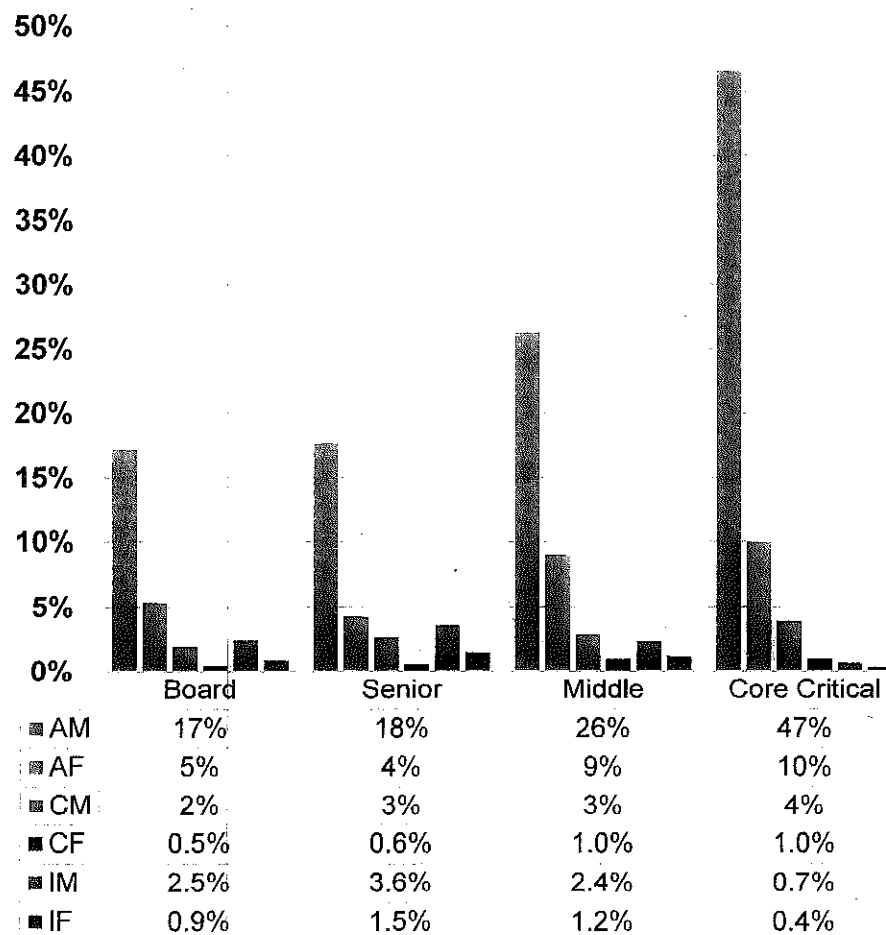
NB

- **Include incentives that promote partnering and collaboration**
- Clear definition of what is expected from focused supplier development approaches as it relates to, inter alia, technical skills development of black businesses, mine entry requirements and quality
- The BEE Codes measure the denominator against which procurement targets are weighted in terms of the Total Measured Procurement Spend (TMPS) and the Reviewed Mining Charter is silent on the calculation. The Charter only makes reference to actual spend

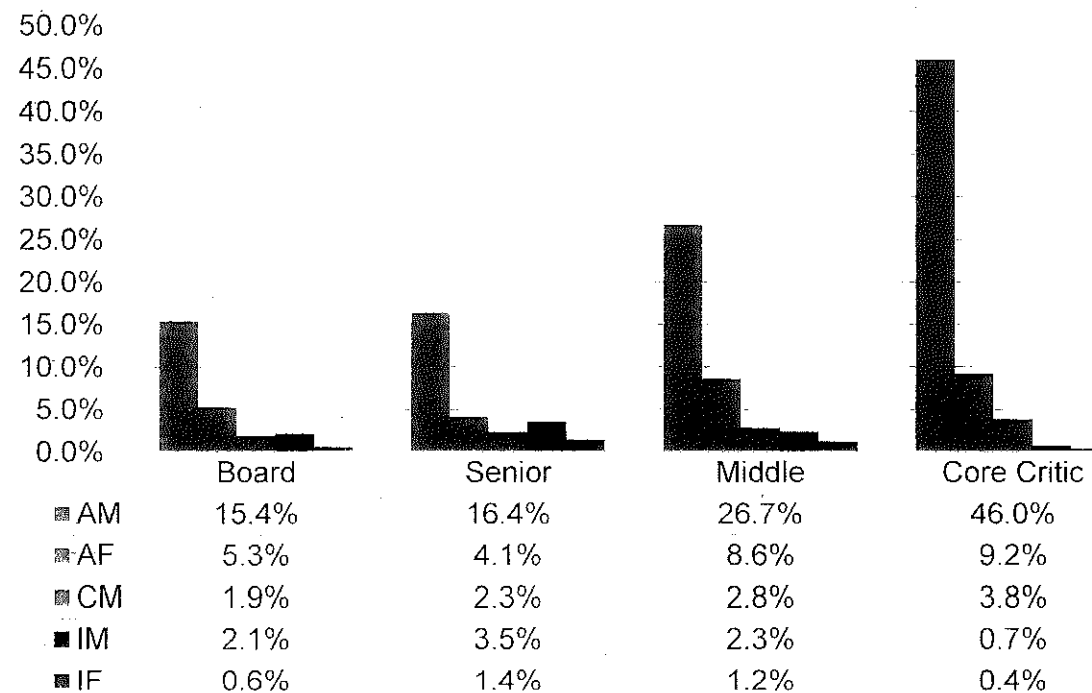
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CEE Report Mining Workforce 2015



CEE Report Mining Workforce 2014



Population Group	Male	Female	Total
African	42.1%	35.3%	77.4%
Coloured	5.4%	4.6%	10%
Indian	1.7%	1.0%	2.7%
White	5.6%	4.3%	9.9%
Total	54.8%	45.2%	100%

National EAP Race and Gender (Stats SA 3rd Quarter 2015)

- The Chamber and its members remain committed to workplace diversity and equitable representation at all levels to promote social cohesion, transformation and competitiveness of the mining industry
- The Mining Charter proposes employment equity targets that are set out in the DTI Codes without any modification which is problematic as previous Mining Charter targets were inclusive of white females (HDSA)
- We propose targets that are in line with industry workplace profiles and aligned to **regional** EAP statistics as reported by the Commission on Employment Equity annually
- Mining Charter targets to align with the Employment Equity Act five year planning cycle as it is proposed that progressive targets be set. These targets have to reflect:
 - Workplace profiles
 - Existing Talent Pool (internal plus external pipeline)
- According to the 16th Commission on Employment Equity Report (2015/2016) the mining industry had a workforce of **435,639 of which 8610 (1.97%) were reported as disabled**. This is an increase from 0.9% reported in 2014. The Employment Equity Act does not prescribe a target for Black disabled persons.
- Targets for people with disabilities should be inclusive of all races and the mining industry is committed to ensuring that it plays its part in the absorption of those classified as disabled; to address the absorption and employment of people with disabilities as the EE Act. The target should therefore be 2% of all employees. Companies to determine appropriate placements that will limit health and safety risks

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

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Criteria	Weighting	Chamber Submission	DMR Target
Senior Management			
Black employees in Senior Management as a percentage of all Senior Management	2	50% (40%)	60%
Black female employees in Senior Management as a percentage of all Senior Management	1	20% (15%)	30%
Middle Management			
Black employees in Middle Management as a percentage of all middle management	2	60%	75%
Black female employees in Middle Management as a percentage of all Middle Management	1	20% (15%)	30%
Junior Management			
Black employees in Junior Management as a percentage of all Junior management	1	70%	88%
Black female employees in Junior Management as a percentage of all Junior Management	0.5	30%	30%
Employees with disabilities			
Black employees with disabilities as a percentage of all employees non-operational (support services)	2	2% (inclusive)	2% Black
Core and Critical Skills	2	40%	40%
Total Points	19		N/A

NB: Items in red denote original submission



- The Chamber supports the categorisation of this pillar as a ring-fenced (**priority**) element
- Protracted low commodity prices, poor commodity demand from international markets, including above inflation labour cost increases have affected employment conditions in the mining industry
- These conditions have led to many companies resorting to right sizing and reducing their staff complements.
- As a "knowledge based industry", mining companies remain committed to training their employees for career growth as well as providing them with skills that will enable them to attain employment outside of mining.
- The Chamber proposes that this element be titled **Skills Development** to reflect the investment on employees as well as community members to better align with the B-BBEE Codes
- We recommend the usage of an industry learning programme matrix to determine the value applicable to training programmes, i.e. are internal training programmes weighted equally to external programme
- **It is unclear how the Mining Charter will treat the expenditure on non-employee individuals? The Codes allow for 6% of expenditure to be expended on unemployed black people**
- **The Chamber does not support the 15% (Of 5% annual payroll) contribution towards a Ministerial Skills Fund.**

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

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Proposed Skills Development Scorecard



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

1154

- The MPRDA Preamble articulates that the state is the custodian of the country's mineral resources, the benefits of which should accrue to all the people who live in it
- Clarity is required on the definition of Labour Sending Areas is difficult to interpret
- Provide guidelines for the application and accrual of credits for impact within the African region
- The target setting of **1% Annual Turnover** towards local development is not endorsed by the Chamber
- Turnover based targets will be prejudicial to marginal mines and will increase costs for mining companies, (based on PWC 2015 and 2014 data, R3.3bn and R3.2bn respectively)
- According to research conducted by KPMG, the global average (top 100 companies) for social investment is 2.5% NPAT; of which the mining industry globally contributes on average 1.82%*
- We propose a maximum contribution of 2% NPAT towards Socio Economic Development
- It is important to note that non-monetary contributions are not considered under this element. The Chamber further proposes **enhanced recognition of technical and capacity building programmes** as part of this element as they facilitate municipalities' ability to deliver more effective services
- Furthermore, we propose that collaborative endeavours (with other companies, government departments, development finance institutions etc.) also be given enhanced recognition
- The real intention should be to measure with the aim of demonstrating the **contribution** of and **impact** that the mining industry has made towards **community development**; there must be a unified agreed definition for the measurement of compliance
- The Charter is silent on the alignment of the social and labour plans (SLP) to the mine and community development requirements. We propose that there should be a direct linkage between MCD contributions and the SLP.
- It is imperative that there be specific guidelines set on the DMR approval of MCD projects to guard against protracted approvals which unfairly prejudice companies

Source: KPMG International, Sustainable Insight: Unlocking the Value of Social Investment, May 2014

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

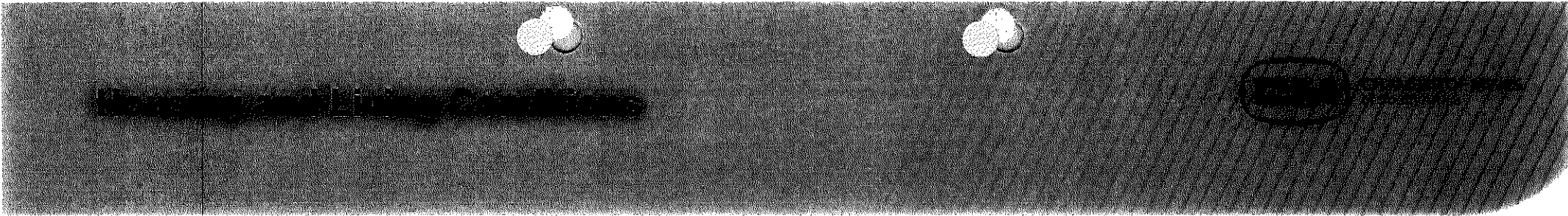
NB:

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

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- The Chamber acknowledges that mining companies should assist and contribute to enabling employees who wish to own their own homes, to do so. However, the form and shape of this assistance should be determined by the particular circumstances prevailing in the different mining areas.
 - The target set should take cognizance of the various factors that impact on housing delivery in the mining areas. These factors include the following:-
 - * **Land Issues:** the challenges regarding access to land and the availability of land in municipal areas.
 - * **Infrastructure and services:** the absence of and provision of bulk service infrastructure pose constraints in some areas.
 - * **Access to finance:** this relates to, amongst others problems associated with the challenge of over-indebtedness, credit records, and the implementation of the Finance Linked Individual Subsidy Scheme (FLISP) etc.
 - A one-size-fits –all approach that does not take account of the circumstances and challenges prevailing in the different mining areas, and the measures that some of the mining companies may have to implement in order to pave the way for housing, is problematic.
 - Mining companies tailor their housing strategies, policies and programmes to respond to the specific circumstances and challenges prevailing in the different areas.

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- Although the Chamber initially submitted that this should not be a Priority element, *the industry recognises the impetus to redress historical imbalances and the need to contribute towards improved living conditions for existing and future mine operations*
- We therefore amend our earlier submission and support the classification of this element as a Priority (ring-fenced) element provided the DMR develops a quantitative measurement formula
- The stipulation that companies should partner with finance institutions to provide **guarantees** for home ownership on behalf of employees is not supported and we request the DMR to provide guidance and a clear definition of what “**guarantee**” entails
 - How will the DMR determine fairness in terms of amount of contribution?
- Support the Mining Charter proposal of integrated development as per the Department of Human Settlements Policies and relevant frameworks and further **propose that the 2009 Revised Housing Standards be updated**
- The following is the proposed as **criteria** under this element:
 - **Provision of adequate and decent housing**
- Bonus Points
 - Contribution towards home ownership options for interested mine employees in consultation with organised labour

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Proposed Housing Covenant



Criteria	Weighting	Chamber	DMR Target
Provision of adequate and decent housing (one person per unit and family units)	6	100%	100%
Bonus Points			
Contribution towards home ownership <u>options</u> for interested mine employees in consultation with organised labour and the Department of Human Settlements	6	100%	100%
• The mine must have an ownership scheme in place, housing policy, proof of implementation of the scheme (housing register will be required as proof	(2)	100%	
• Process and policies to make the scheme affordable (E.g. indebtedness program, financial training programs)	(2)	100%	
• Proof of a consultative process with internal and external stakeholders (employees, municipalities, traditional leaders, organized labour) – minutes, memos, signed attendance registers with stakeholder	(2)	100%	
Total Points	6		

NB:

- In terms of contributions towards Home Ownership, companies to have the wherewithal to determine a suitable policy for this contribution based on needs of employees. This may include subsidies towards rental accommodation and home ownership in the domicile of the employees' choosing
- Further engagements are required on this element

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- Entities which are not holders of rights, permits or permissions in terms of the MPRDA (such as manufacturers of autocatalytic converters and of jewellery) may find difficulty in applying the provisions of the Mining Charter to their activities, the Chamber believes these companies should comply with the DTI Codes
- We propose that Guidelines should be developed for independent monitoring and verification
- The review of targets should be subject to a stakeholder engagement processes which should consider economic conditions, beneficiary dictates and broader policy shifts as proposed
- The usage of Y/N as a basis of measurement should be removed on all elements
- The Chamber recommends that the Ownership element be reserved until Judgement has been given in the Chamber's Declaratory Order, but in the meanwhile submits that holders be deemed to hold the greater of 26% or their actual empowerment percentage, and that they not be required to restore any loss of such level
- The Chamber further proposes that there be sub-minimums (50%) on Priority Elements [with the exception of Housing and Living Conditions which should have a target of 100%]

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- The Chamber welcomes the DMR's intention to align government policies and create regulatory certainty
- Transformation not only a regulatory requirement, but a business imperative and therefore appeal for a considered and inclusive approach to the development of an effective transformation instrument
- The Chamber is of the view that continued discussions are necessary with all stakeholders who are directly affected by the Mining Charter and the manner in which it is implemented.

CHAMBER OF MINES OF SOUTH AFRICA

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

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

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

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

DETAILS OF ENGAGEMENTS

DATE.	STAKEHOLDER.	COMMENTS.	DMR RESPONSE.
19/08/2016.	ARM AND MEMSA.	<ul style="list-style-type: none"> The Reviewed Charter must consider not only transformation and local value add in the mining industry but also backward, forward and side stream linkages. The definition of locally manufactured good is welcome but fails to set a minimum South African content, it is suggested that this be aligned with the international norms at 65% value add. 	<ul style="list-style-type: none"> Supported. The Draft Charter proposes that there must be 60% local content.

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		<ul style="list-style-type: none"> • The Reviewed Charter must remove the multinational supplier loophole as it is already dealt with in terms of the BBBEE Act and Dti Codes. 	<ul style="list-style-type: none"> • The Dti Multinational supplier requirements are linked to equity equivalence, the Department does not support the notion of equity equivalence. The proposal for multinationals in respect of the Charter relate to the 30% balance spend by mining right holders from multinationals. The Department will create mechanisms to ensure that this requirement is implementable. • Noted.
		<ul style="list-style-type: none"> • It is not clear at what level BEE compliant is set at. It is recommended that the eligible procurement metric be the product 	

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		<p>of the BBEE procurement recognition level and local value add.</p> <ul style="list-style-type: none"> • The Charter is discriminatory against new mining investors in that these will need time to develop BBEE/local suppliers while it will be much easier for long established investors to comply with these proposed targets. Procurement targets should thus be staggered over the life of the mining right. • It is not clear what "BEE enterprise development" means. This must be rephrased and expanded for clarity. • In respect of HRD the obligation should be finance core and critical skills, in particular as the mining industry is more knowledge based. 	<ul style="list-style-type: none"> • Noted staggering of targets will be considered. • Noted clarity will be provided to talk to enterprise development. • Supported.
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		<ul style="list-style-type: none"> • R&D is necessary for survival of the mining industry, this aspect should not be conflated with HRD but should be a separate obligation for all mining right holders to spend at least 2% of turnover on R&D in South Africa. • The misalignment with the dti codes creates loopholes & is confusing. All industry charters and codes apply the EME, QSE and generic definitions. Also, in terms of the Small Business Act a business can have up to 200 employees, which will not promote small business development start-ups. We recommend that DMR to utilise the dti definitions and rules for EME, QSE and generic companies as suppliers. EME's & QSE's who are 	<ul style="list-style-type: none"> • Noted and this will be taken into account in the review process. • The Charter and the MPRDA does not provide for categorisation of companies in terms of size. All mining right holders must comply without exception. The Draft Charter does refer to the Small Business Act and this will be reconsidered.
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		<p>more than 51% black owned are automatically level 2, if they are more than 75% black owned, they are automatically level 1. Both must be conform to the ES definition.</p> <ul style="list-style-type: none"> • SABS will not have the capacity or know how to categorise the items, and the raw material analysed in the components and consumables for tier 1, 2, 3 suppliers. We recommend that DMR to use approved verification agencies to determine ES status of suppliers. Suppliers with no ES status do not count for the mines scorecard. • Mine community refer to communities where mining takes place and labour sending areas. We recommend that DMR to apply 1% of NPAT for community 	<ul style="list-style-type: none"> • The Department will engage with SABS to look into issues of capacity and related matters. • Noted.
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		<p>development and specify a minimum 75% of beneficiaries must be African, coloured & Indian South Africans as per dti codes.</p> <ul style="list-style-type: none"> • We recommend that the DMR must use rules that are already known in the industry and to apply dti definitions for trustees and governance, involve the Provincial Department of Economic Affairs to be part of trust. 	<ul style="list-style-type: none"> • Noted, The Department continues to engage the Dti to ensure that there is alignment.
19/08/2016.	National Treasury.	<ul style="list-style-type: none"> • National Treasury cautioned against the creation of Trust funds which will reside within the Department. • The levying of additional 1.5% towards a Ministerial Skills Development Trust may have tax 	<ul style="list-style-type: none"> • The Department is looking at possibilities of creating social development vehicles instead of Trusts (Agency). • Having met the companies that created the Multinational suppliers trust fund for their

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

		<p>active participants in the running of businesses. In this regard the Department was advised to look at German empowerment model to further strengthen the Revised Charter proposal on Esops.</p> <ul style="list-style-type: none"> • National Treasury acknowledged the Bill and its potential to disadvantage employees. The Bill is currently being processes for tabling in Parliament. It was agreed that National Treasury will relay the Departments concerns to the drafters of the Bill and a meeting to mitigate the tax implications for Esops should be held within the next two weeks. 	<p>the issue of worker representation at board level.</p> <ul style="list-style-type: none"> • The implications of the draft Taxation Laws Amendment Bill were also discussed. This Bill was gazetted by National Treasury on 8th July 2016 for public comments. The Bill proposes a new section 8CA which is to the effect that dividends consisting of proceeds from the disposal or redemption of any underlying equity shares to the restricted
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		<p>equity instruments will be included in the income of the employees. Restricted equity instruments are defined to include ESOPS.</p> <ul style="list-style-type: none"> • This proposed section could be problematic if the ESOP's term is lengthy or if the scheme is structured to be restricted indefinitely to ensure prolonged fulfilment of the objectives of the Mining Charter and BBBEE legislation. This proposal potentially has negative implications for employees as it seeks to cast the net wider with regard to amounts being included in the income of employees, as opposed to
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		<p>enhancing the taxation laws to bring them in line with, and to promote, the country's BBBEE objectives.</p> <ul style="list-style-type: none"> • The Department shared the challenges relating to the linking of Social and Labour Plan projects with the IDP's, due to the prevalent challenges of implementation capacity at municipal level. It was emphasised that the Mining Charter and SLP's are mutually reinforcing and that Municipalities, as constitutionally mandated institutions for community
	<ul style="list-style-type: none"> • National Treasury advised the Department to be explicit as to the percentage contributions towards labour sending areas. National Treasury further committed to avail its Local Governance Team to assist the Department in refining the Charter proposals on the interface between Social and Labour Plans and Mine Community Development. 	

5/09/2016	Government wide stakeholders (Dti, DPME, DHS) under the auspices of the Special Presidential Package, Presidency.	<ul style="list-style-type: none"> • The removal of the Housing and living conditions as an element of the Charter was not supported. • There was an indication that some IDP's are not necessarily budgeted for. • Macroeconomics, empowerment/BEE could mean major contingent liabilities on compensation problems, 	<ul style="list-style-type: none"> • The Department indicated that such removal is needed to put specific focus and emphasis on this aspect. The Housing and living conditions standards to be reviewed and elevated into an enforceable instrument. • This must be further verified with COGTA/Treasury in the planned engagements. • The Department was of the view that the law provides sufficiently for BEE transactions, there law can only go so far. BEE partners 	development are responsible for development.
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		environment etc class action currently in courts.	<p>must be circumspect in concluding these transactions and not buy into deals that are under the water.</p> <ul style="list-style-type: none"> • Environmental aspects including contamination of water and rehabilitation are regulated in terms of dedicated legislation and should not be part of the Charter. Matters of compensation and the class action case are dealt with in terms of COIDA and related legislation. • Migrant labour remains a sensitive issue which needs specific focus.
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		<ul style="list-style-type: none"> • Empowerment/development/procurement etc should consider wider region (SADC) rather than just SA due to migrant labour system and need to also develop regional economy especially in labour sending areas in SA and neighbouring countries. 	
		<ul style="list-style-type: none"> • Human Resources / Skills – also cover areas directly or indirectly related e.g. occupational health and safety, laboratories for hygiene testing samples etc. 	<ul style="list-style-type: none"> • Not advisable to provide a list of training areas as every stakeholder will want to be listed as well. It is advisable to keep this requirement general.
		<ul style="list-style-type: none"> • Health and safety needs to be brought back in given the problems with Mine Health & Safety Act – 	<ul style="list-style-type: none"> • The sustainable development element will be reinstated with specific focus on health and safety. Environmental

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		<p>note our benchmark tour to Australia last year! Especially issues related to mining, peri-mining communities – polluted water / air etc.</p> <ul style="list-style-type: none"> • Need to consider fund for post - mining future of towns in mining areas – your work on distressed mining communities. 	<p>aspects including contamination of water and rehabilitation are regulated in terms of dedicated legislation and should not be part of the Charter.</p>
19/10/2016.	National Union of Mineworkers.	<ul style="list-style-type: none"> • The NUM is calling for the inclusion of “Meaningful consultation” in the definitions section, as we are currently finding it difficult to be meaningfully consulted in the implementation of charter targets and compilation of the mining charter report before submission to the regulator. The definition should 	<ul style="list-style-type: none"> • The Department supports meaningful consultations between stakeholders in giving effect to the relevant elements of the Mining Charter. Compilation of the report is the prerogative of the right holder and it remains Government’s

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		<p>read as follows: <i>The extensive consultation conducted by the mining right holders and its stakeholders. These will include the primary stakeholders (which includes employees/workers, organized labour unions and all forums or structures) and Secondary Stakeholders (including relevant local & district municipalities (including their representatives), traditional leaders or authorities).</i></p> <ul style="list-style-type: none"> • We are propose the following additions in the Objectives section: <i>The Broad Based Black Economic Empowerment Charter for the South African Industry, herein referred as the "Mining Charter", is a government instrument designed to effect sustainable growth and</i> 	<p>responsibility to evaluate, enforce and monitor compliance with the Charter requirements.</p> <ul style="list-style-type: none"> • The Department notes the suggested proposals to the objects of the Charter and supports same to the extent outlined above.
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		<p><i>meaningfully transformation of the mining industry (through a meaningful consultation process, especially with primary stakeholders).</i></p> <ul style="list-style-type: none"> • We call on the Department to have an incremental target for the ownership element, which will be 30% by 2018, 32% by 2020 and 35% by 2022 as a minimum target. • We unreservedly reject the notion of a Special Purpose Vehicle, as its founding objectives that were aligned to the companies act are no longer in place. 	<ul style="list-style-type: none"> • The Department supports progressive realisation of the Charter targets within the 3 years transitional period. Any suggestion to go beyond the transitional arrangement is not supported. • The Department notes the concern, consideration will be given to expand on the structuring of transactions, however this requirement was intended to protect the interests of BEE partners (Esops and communities)
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		<ul style="list-style-type: none"> On Beneficiation The NUM is calling for the fast tracking of the current Amendment Bill in Parliament, in order for the DMR and DTI to fast track the implementation of the Beneficiation Strategy in line with the National Development and Industrial Policy Action Plan. On human resource development, the allocation of a percentage of mineral right holder's payroll to skill development, training and research is supported, but we think it's important for it to be aligned to the 	<ul style="list-style-type: none"> The Department notes the concern. The process to finalise the MPRDA Bill is managed by Parliament. The Department notes the concern and will reconsider the proposals. The Charter 5% proposal excludes the mandatory 1% skills levy as per the Skills Levy legislation. 	and ensure that they actively and meaningfully participate in the development of mining project/s.
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		<p>current 6% in the generic codes of good practice. The money spent should be restricted to actual fees paid for a course or programme and not miscellaneous logistical costs.</p> <ul style="list-style-type: none"> • We would like to call on the Department to revise the Housing and Living Conditions Standards that were gazetted in 2009. • We call on the Department of Mineral Resources to strengthen and capacitate the Mineral Regulations branch, as we believe the below compliance with Section 28 (2) (C) of the MPRDA is non-negotiable and compliance should 	<ul style="list-style-type: none"> • The Department notes this concern and will address it accordingly. • The Department notes this concern and will address it accordingly.
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		<p>be met with relevant corrective measures.</p> <ul style="list-style-type: none"> • We would like to again express our concern with the removal of the Sustainable Development element in the draft mining charter. 	<ul style="list-style-type: none"> • The removal of this element will be reconsidered taking into account submissions received from stakeholders.
28/10/2016.	Department of Trade and Industry.	<ul style="list-style-type: none"> • Definition proposed for Capital goods – an intermediary sector that manufactures and supplies components for materials handling, environmental control, manufacturing process, drilling, digging, earthmoving and complete plants for inter alia the mining sector and supplying equipment such as pressure vessels, cyclones, crushers, screens, conveyors, mills, pumps and valves including capital 	<ul style="list-style-type: none"> • The submission is noted and will be considered in the review exercise.

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		<p>goods used by contractors and leased fleet.</p> <ul style="list-style-type: none"> • Consumables: We also propose that the following consumables be excluded: water, electricity, land rates, oil and gas products and lubricants. • Services (this should be split into two definitions): Mining service providers – companies that provide services or products to the mining industry which are essential, classified as discretionary services to the mine and mining production process excluding, energy, fuel, utilities and hydrocarbons. General Service providers – services that are applicable to the entire company classified as non-discretionary 	<ul style="list-style-type: none"> • The submission is noted and will be considered in the review exercise. • The submission is noted and will be considered in the review exercise.
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		<p>services such as security, payroll, finance, medical, cleaning, insurance also services which are supplementary or optional to the mine or the mining production service. We further propose that the following services should not form part of the Charter: landscape, catering, road and housing/civils maintenance, basic housing construction in order to promote industrialisation imperatives.</p> <ul style="list-style-type: none"> • Locally manufactured – capital goods and consumables manufactured in South Africa achieving a minimum 60 percent threshold of local value add. Due to our experiences with the state 	<ul style="list-style-type: none"> • The submission is noted and will be considered in the review exercise.
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		<p>procurement programme the dti has the capacity to assist with monitoring and evaluation of "locally manufactured goods" concept</p> <ul style="list-style-type: none"> • BEE compliant company – is a company with a minimum BEE level 4 of the new codes and minimum 26 percent black ownership. • We recommend that this service be not limited to SABS but other modalities and possible bodies that can verify local content should be considered. Local content verification can be done in conjunction with BEE verification agencies or by establishing new verification agents solely focusing on verifying and certifying companies 	<ul style="list-style-type: none"> • The submission is noted and will be considered in the review exercise. • The Department will engage with SABS to look into issues of capacity and related matters.
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		<p>on local content as opposed to SABS.</p> <ul style="list-style-type: none"> • The dti reiterates that the proposed scorecard for the Draft Reviewed Mining Charter should enable companies to be issued with a B-BBEE certificate that they can use when they trade with companies in other sectors of the economy. In this regard the scorecard should make provision for allocation of points as well as the incorporation of the B-BBEE recognition level of the Generic B-BBEE Codes of Good Practice. It is the responsibility of our departments to ensure that the B-BBEE Act as amended 	
03/11/2016.	Traditional leaders in North West. Province, Bojanala District.	<ul style="list-style-type: none"> • The Department of Mineral Resources conducted an 	

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	<p>engagement with the traditional leaders on the Gazetted Draft Mining Charter, 2016. The meeting was attended traditional leaders and was addressed by the minister of Mineral Resources and Premier of the North-West Province.</p> <ul style="list-style-type: none"> • The Department of Mineral Resources presented the draft Charter to the traditional leaders who expressed their support of the draft Mining Charter and enquired on how the draft document will assist them in applying Mining Rights for communities. They also highlighted their support for the beneficiation which can have spin-offs in addressing poverty and unemployment within their respective communities. 	<ul style="list-style-type: none"> • Submission noted. • Mineral beneficiation will further be elaborated on in the MPRDA Bill.
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		<ul style="list-style-type: none"> • They also indicated their hope for the establishment of factories which can provide them with fertilizers to be used for agricultural purposes. The traditional leaders raised their concern on the non-implementation of the mining related policy framework. In its respond the Department of mineral resources indicated that the communities have preference in terms of Section 104 of the MPRDA. • The Premier also outlined the province's strategy to improve communities lives through the Small towns and Dorpies strategy which can be complemented by the 	<ul style="list-style-type: none"> • Submission noted.
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18/11/2016.	Community consultation in Free State Province, Matjhabeng Local Municipality.	<p>benefits to be derived from the provisions of the Mining Charter.</p> <ul style="list-style-type: none"> • The Executive Major (Mr Speelman) of Matjhabeng Local Municipality opened the proceedings and welcomed everyone present. The Major thanked the DMR for keeping their promise of coming back to Welkom. However, the Major indicated ex-miners were promised to receive their money by the Deputy Minister during his state visit, and till today they have not received anything. The Major made a plea to the Department to give people of Matjhabeng licence to operate Mines. • IDP's will assist or drives the economy. The municipality had 	<ul style="list-style-type: none"> • The Deputy Minister is on a work trip overseas and will most definitely working hard to ensure the issues of ex-mine workers are resolved. • Department is committed to improving relations with its stakeholders and has an open door policy.
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		<p>identified one of the poorest IDP's in the municipality. There is no channel of communication between the municipality and the Department of Mineral Resources and needs to be improved drastically.</p> <ul style="list-style-type: none"> • Indicated that a forum has been created by the municipality and DMR is one of the members. The municipality is concentrating on the environmental impact of mining in the community. • MTDA is a duplication of MQA. • MHSA been used at the mine as a tool for retrenchment. • Black managers do not have powers at the mines • DMR does not have effective monitoring and enforcement body. 	<ul style="list-style-type: none"> • The Charter responds to the issue of alignment of SLP contributions to IDP's. • The Department is working on improving its capacity to monitor and evaluate implementation and enforcement of the law. • Issues of discrimination at work place are noted and must be elevated to relevant structure for attention.
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		<ul style="list-style-type: none"> Local Black people do not have procurement opportunities in Welkom, instead they take people from Johannesburg and there are lot of red tapes. Mining dumps are been rehabilitated by outside companies, and local people are not given opportunities because DMR states that they do not have jurisdiction over them. Transformation in the mining industry is taking too long to happen. The rate of poverty, unemployment and disease is very high in the Free State. It is very expensive to venture into mining. What type of legacy is the mining companies creating. 	<ul style="list-style-type: none"> The MPRDA and Charter provide for benefits for all South Africans from exploitation of mineral resources. The issues of mine communities who are negatively impacted by mining by virtue of their proximity are receiving the necessary attention. Transformation is an ongoing process and government will do all that is necessary to ensure that Broad based and meaningful economic empowerment becomes a reality.
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		<ul style="list-style-type: none"> • Harmony Gold is the biggest zama zama in Welkom. • The procurement does not work for Black people, and the tendering process must be amended. • Public participation must be regarded as critical process. • The department must hold meeting every Thursday to educate people about mining. • Most of the mining sites of Harmony are not rehabilitated. • Does the department conduct research before a mine can be closed? • What informs the department to close the mine. 	<ul style="list-style-type: none"> • Government is stepping up efforts to deal with issues of illegal mining and Zama-Zama's. A multi-stakeholder task team is dealing with these issues in a co-ordinated and multidisciplinary manner. • This will be taken up with the Ministry to ensure that the provisions of NEMA are complied with. Environmental inspectorate has been capacitated to deal with these kinds of transgressions.
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13/12/2016.	Community consultation in Limpopo Province, Mogalakwena Local Municipality.	<p>Communities raised the following questions:</p> <ul style="list-style-type: none"> • How is the mining industry redressing the imbalances of the past in the industry? • What is the DMR doing to ensure transformation becomes a reality in the mining industry? 	<ul style="list-style-type: none"> • Mine closure is informed by a variety of factors including completion of activities by the mining operation and lodgement of an application for a closure certificate. Some mines are put on care and maintenance and not necessarily closed.
		<ul style="list-style-type: none"> • The department responded that in the past women, Black people were not allowed to own minerals in South Africa. The charter is redressing the imbalances of the past by allowing women and Black people to own minerals and hold management positions in the mining companies. 	<ul style="list-style-type: none"> • Mine closure is informed by a variety of factors including completion of activities by the mining operation and lodgement of an application for a closure certificate. Some mines are put on care and maintenance and not necessarily closed.

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		<ul style="list-style-type: none"> • More clarity on how the agency referred to on the presentation going to unfold. • What is the department doing to ensure that the mines comply with the procurement? • How will the department assist the locals to ensure that they adhere to the SABS standards? • Is the department doing something on skill outreach and is the charter linked with the job saving strategy of the country? • Development in the mining towns is very poor, what is the department doing to ensure that the SLP is aligned to the needs of the communities where mining is taking place? 	<ul style="list-style-type: none"> • Foreign suppliers are required to contribute 1% of the revenue generated from the South African mining industry towards the Mining Transformation and Development Agency. • The MTDA will be responsible for supplier and enterprise development (including community based companies). • Labour sending area is where most of the employees are sourced from within Southern African borders.
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		<ul style="list-style-type: none"> Is the SLP not supposed to be discussed with the communities through consultation and engagement? What are the consequences of none compliance with the SLP commitments? The communities needed for explanation on the term labour sending areas. What is the department doing with non-compliant companies? 	<ul style="list-style-type: none"> Every mining company is being monitored with the terms and conditions of the contract. If the mining company does not comply, then the department can cancel or suspend the licence. Mining companies are given the opportunity to correct their mistakes before the department can issue suspension or cancellation of contract. The social and Labour plans must be in line with the Municipalities IDP's. If the supplier buys goods in China and brings them in the country that would not be
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			<p>regarded as been procured locally. There are goods which can be procured locally and does not exclude people from other provinces to render the services. The SABS would conduct verification on goods. Mining companies must consult with the general public before they can be issued with a mining right and anyone in South Africa can object to the granting of such right. Section 26 of the MPRDA promotes beneficiation. Mining companies would be restricted to beneficiate on certain strategic minerals.</p>
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28/02/2017.	UASA and Solidarity, St George's Hotel, Irene.	<ul style="list-style-type: none"> • Appreciated the brief on the latest developments with the Reviewed Mining Charter. • Expressed concern over lack of access to the actual document. • Concerned that the Employment equity targets are unachievable and will lead to poaching of workers between mining companies. • Questioned whether a regulatory impact assessment was done. • Welcomed the re-instatement of the Sustainable development element. • The proposal for 1% annual turnover and related contributions will impact on wage negotiations, 	<ul style="list-style-type: none"> • The concerns expressed were noted. • A Socio-Economic Impact Assessment has been done in consultation with the Department of Planning Monitoring and Evaluation and will be availed upon finalisation of the Charter for implementation. • Transitional arrangements are provided for to afford the industry time to progressively comply with the proposed targets. • Follow up meeting to iron out issues was agreed.
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		<p>inhibit growth and lead to job losses.</p> <ul style="list-style-type: none"> • Overall not comfortable with the Charter but expressed appreciation for the engagement. • A follow up meeting must be arranged with the Deputy Minister to iron out issues of contention. 	
28/02/2017.	AMCU, St George's Hotel, Irene.	<ul style="list-style-type: none"> • Is this still and open consultation process? • What is the latest on the Declarator with Chamber of Mines? • Mining Companies comply with the bare minimum. The proposed increase in targets is supported. • There is a need to strengthen community consultation and SLP provision through the Charter. 	<ul style="list-style-type: none"> • The Department welcomed Amcu's input and committed to engage further on the draft. • The Chamber matter is sub-judice and pronouncements will be made in due course.

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28/02/2017.	BEE mining companies, St George's Hotel, Irene.	<ul style="list-style-type: none"> • The 10% increase for workers in the form of ESOPS is welcomed. • Charter should be clear regarding unencumbered net value in the hands of BEE partners. • The industry committed to facilitate 100 Billion towards transformation in 2004, has this been assessed and verified by the Department? • What about Black male empowerment as it relates to procurement? There may be unintended consequences for singling out women and youth. • Need to watch out for consolidation of rights; consequences of previous deals do not apply to new rights. • Why can't a BEE partner sell to another BEE partner? 	<ul style="list-style-type: none"> • The Department acknowledged the input received. It committed to improve on its stakeholder relations as suggested. It is working into issues of capacity to ensure better monitoring and evaluation of implementation and enforcement of the law. • The Charter will provide more clarity on a number of issues including active participation and control across the mine value chain.
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		<ul style="list-style-type: none"> • The 3 years transitional period proposed in the Charter is too long, it must be reduced. • The minimum 29% for ownership must take into account the nature of the operations, whether open cast or underground, the duration of the right and related factors. The percentage must be increased for open cast mining. • The draft Charter must also consider the costs for BEE's before deciding on Black person shareholding. • There must be a databased or newsletter where people can be kept abreast of developments and register their interests. 	
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		<ul style="list-style-type: none"> • How will the procurement element apply to evergreen projects its more suited for long terms projects? • The Charter must provide for marketing of mining production to ensure that BEE partners participate meaningfully and control their proportionate share across the mine value chain including logistics (transportation). There is a mischief by mining operations of diverting benefits away from BEE partners. • The Charter is silent on monitoring structures. • It is futile to have good laws without proper monitoring and evaluation of 	
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		<p>implementation and enforcement of the law.</p> <ul style="list-style-type: none"> • The Department is lacking in this regard. • There must be measures to ensure that dividends are declared to BEE partners. • What are the benefits of pursuing mineral beneficiation, the Charter is not clear. • The Department needs to work on stakeholder relations. • It must provide support to communities to derive benefit from the proposals. • Procurement must be a ringfenced element. • The proposed stakes for women empowerment must be increased. 	
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		<ul style="list-style-type: none"> • The definition of HDSEA to Black is supported. • Developmental funding institutions must come on board. • The Charter is silent on creation of Black enterprises. 	
02/03/2017.	National Union of Mine Workers, Tshwane.	<ul style="list-style-type: none"> • The proposed transitional period on the Charter is too long and must be limited to 12 months. • How will the 18% cap on dilution be structured? • The obligation must be on the right holder to finance the ESOPS and community shareholding. • What steps to follow before gazetting? 	<ul style="list-style-type: none"> • Submission and concerns noted.
02/03/2017.	RMB and Afro-pulse (Tshwane).	<ul style="list-style-type: none"> • Need clarity on the definition of net value and time graduation factor. 	<ul style="list-style-type: none"> • Submission and concerns noted.

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		<ul style="list-style-type: none"> • Make provision for dilution on mining right holders who have claimed the 11% beneficiation offset. • Does net value include actual shareholding or cash flow or both? • Existing deals never realised any value. • BEE's are just enablers why are they waiting? • ESOPS must include free carry and trickle flow of dividends. • BEE entrepreneurs must be able to absorb an element of risk. Further unpack net value. • The Banks and financial institutions are the biggest stumbling block to transformation. • 3% to play with is not a good idea. 	
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		<ul style="list-style-type: none"> • 3% to be given to BEE entrepreneurs. • Further detail is needed on how communities will benefit from their shareholding. Whether to have free shares from day 1 or have an agreement on what will be a minimum despite the markets (share price). 	
21/04/2017	Department of Trade and Industry, DMR offices.	<ul style="list-style-type: none"> • The process to be followed in developing the Charter should be similar to that conducted by other sectors when developing their codes and be gazetted for 60 (sixty) days for public comments. Acknowledged that DMR has already conducted the consultation and inducted that the department tick the box on this aspect of engagement, which was 	<ul style="list-style-type: none"> • The mining industry's consultations have been conducted in terms of Section 100 of the MPRDA. The BBBEE Act process operates on the basis of consensus while the MPRDA process is based on consultations and this may cause challenges if the BBBEE Act process is to

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		<p>already undertaken. If DMR can do as indicated there will be no need for seeking deviation on the stakeholder engagement.</p>	<p>be followed. The meeting agreed that there is a separate process led by the Deputy President which will decide and resolve on the process issues and the status of section 100 of the MPRDA and section 9 of the BBBEE Act.</p>
		<ul style="list-style-type: none"> • Verification of BEE credentials: It indicated that dual compliance by suppliers should be avoided; • DTI indicated that it will support DMR's position provided that there is a unit or division within the department comprised of competent persons who can conduct such verification and system in place to implement such verification. DTI 	<ul style="list-style-type: none"> • DMR indicated that its position is to conduct in-house verification as opposed to independent verification agency

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	<p>also undertook to engage with the BEE Valuation Regulator (SANAS) in this regard. Another option was that the verification should be conducted by an independent agency while DMR can do internal due diligence and this option could be confirmed with SANAS and feedback will be provided during the next meeting.</p> <ul style="list-style-type: none"> • DTI is fully supportive of the proposal for the increment of BEE ownership shareholding of 29% since it is not below the minimum of 25%; • DTI supports 11% offset for beneficiation against the ownership element. However, it required clarity on the implementation of the same. 	<ul style="list-style-type: none"> • DMR indicated that such clarity will be provided on the proposed amended Section 26 and regulation of the MPRDA thereof.
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		<ul style="list-style-type: none"> • DTI also sought clarity on the downward adjustment of the ownership shareholding to 18%, which has to be empowered within as stipulated timeframe. DTI was satisfied that this takes care of the provision of once empowered always empowered provision. • DTI proposed that DMR should consider the option of using Equity Equivalence on suppliers instead of 1% of foreign suppliers' annual turnover since most companies will opt for it despite of less benefits when comparing the two options. DTI undertook to provide detail information on this option during the next meeting. 	<ul style="list-style-type: none"> • Details of this to be shared during the next team engagement. • DMR indicated its main objective is to ensure that there is change of ownership completion of the mining industry. It expressed reservations regarding the equity equivalence suggestion.
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		<ul style="list-style-type: none"> • DTI proposes that women representation on the skills development be increased from 15% to 25% for it be in line with the Dti Codes of Good Practice. It proposes for the increase of the employment target of people living with disability (black) 2% to 3% in line the codes. • DTI raised concern on the proposed companies' contribution of 2% to a trust or agency. However, it was satisfied when DMR indicated that such contribution will be ringfenced for skills development and be contributed towards the MTDA and it is engaging the National Treasury in this regard. • DTI supports the collapsing of the capital and consumables goods into 	<ul style="list-style-type: none"> • DMR agreed to fully align with the Codes and the Employment Equity Act.
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		<p>one category and the target of 70% thereof. However, it proposed that the transitional period for the implementation of this target should be changed from 5 to 2 years.</p> <ul style="list-style-type: none"> • It proposes that the discretionary spend should exclude lubricants, coolants and energy; • It also proposed that the verification of local content should include the country of origin. • It further proposed for the alignment of the Mining Charter with the black industrialist Programme to be supported by the IDC and PIC while DMR can identify black people to be capacitated within the mining industry sector. 	
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		<ul style="list-style-type: none"> • DMR proposal for higher target of 60% local content is supported. • Discrimination among local and multinational suppliers. 1 % for multinationals is an add-on. Fair treatment. • The targets must be staggered and progressively achieved. • Dti advised that community development contributions (SLP) must explicitly be biased in favour of black communities. 	
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CHAMBER OF MINES
of South Africa

T: 011 438 7000
E: info@chamberofmines.org.za

5 Hollard Street, Johannesburg 2001
PO Box 61809, Marshalltown 2107

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17 November 2016

Minister M J Zwane
Minister of Mineral Resources
Building 2 C, Trevenna Campus
Cnr Meintjies and Francis Baard Streets
Sunnyside
Pretoria

Sent via email: Queen.Poolo@dmr.gov.za

Dear Minister Zwane

Engagement Between the Minister and the Chamber

When we last met we agreed that it would be useful for the Minister and his team to meet with the Council of the Chamber on 19 November 2016 to discuss a range of issues impacting on the mining industry. The Chamber's Council met on the morning of 16 November 2016. It is the opinion of Council that it would be far more useful rather for there to be a more private engagement between the Minister, the senior Officials of his choosing and the Chamber's Office Bearers and CEO.

While there is some urgency in such an engagement taking place as soon as possible, I must unfortunately advise that only one of the Chamber's Office Bearers is available on 19 November 2016. Therefore, I propose that we seek a mutually convenient date for a private meeting that will allow both parties to have their full teams present.

2016 is fast coming to a close and a number of critically important issues still remain unresolved, despite the fact that there has been on-going engagement on some of such issues. Such irresolution is impacting heavily on the industry, on investor confidence and on the industry's ability fully to contribute to South Africa's development. Decisive action is required on issues such as:

- the Mining Charter and, in particular, the ownership element of the Charter (continuing consequences);
- the MPRDA Amendment Bill which has now been further delayed, and in respect of which the NCOP has the right to open discussions on all the Bill's provisions despite prior agreements having been reached in earlier legislative processes;
- the issue of environmental permits which, it appears, are sometimes dealt with outside the necessary statutory provisions;
- the inconsistent processing of s11 applications, where some are inexplicitly fast-tracked while others are subject to equally puzzling delays; and
- the inappropriate imposition of s54 safety closures.

These are the sort of issues that we would like to discuss with the Minister, and which need to be resolved if the industry is to move forward.

Equally important is the functioning of the Department of Mineral Resources (DMR). There is no use beating about the bush on this issue, we need to be



COUNCIL OF THE CHAMBER: M Teke (President), A Sangqu (Vice President), N Froneman (Vice President), A Bam, R Baxter, P Dunne, M Fraser, T Goodlace, C Griffith, J Han, N Holland, MJ Houston, L Kgatle, B Magara, N Mbazima, M Mgojo, T Mkhwanazi, M Mothoa, B Petersen, S Phiri, N Pienaar, W Potgieter, N Pretorius, MP Schmidt, PW Steenkamp, S Venkatakrishnan

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forthright and honest about the situation. The industry is extremely concerned about the lack of leadership and bureaucratic stability at the DMR. Bluntly put, this simply has to be addressed.

We also cannot shy away from the State of Capture report which contains very serious and concerning allegations. While the report is still to be subject to a Judicial Review, the perception has been created that the report is describing a country, and a mining industry, that is in deep trouble. We need to face this head on.

The mining industry is in crisis. This crisis is exacerbated by the lack of resolution on critical issues. I hope that we will soon be able to meet as a small leadership team to agree on ways in which to rescue the industry and to come to an understanding about the definitive actions required to make this possible.

Yours sincerely

MIKE TEKE
PRESIDENT
CHAMBER OF MINES OF SOUTH AFRICA

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CHAMBER OF MINES
of South Africa

T: +27 11 498 7100
E: info@chamberofmines.org.za

5 Hollard Street, Johannesburg 2001
PO Box 61809, Marshalltown 2107

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PRIVATE & CONFIDENTIAL

26 January 2017

Mr David Msiza
Acting Director General
Department of Mineral Resources
Trevenna Campus
Cnr Meintjies and Francis Baard Streets
Sunnyside
Pretoria

E-mail: David.Msiza@dmr.org.za/ Ms SB Mlawuli: busi.mlawuli@dmr.gov.za

Dear DG Msiza

MINING CHARTER OWNERSHIP ELEMENT AND THE NON-OWNERSHIP ELEMENTS IN THE REVIEWED MINING CHARTER

The Chamber of Mines Council met yesterday at which time the progress on the discussion regarding the ownership element of the Mining Charter and the non-ownership elements in the Reviewed Mining Charter were discussed. As per my telephonic discussion with you yesterday morning, the Chamber is extremely concerned that the DMR has inserted into the draft wording on the ownership element for the Reviewed Mining Charter a set of new issues that have never been discussed in the task team and which do not form part of the "V8" agreement. In particular, the Chamber is very concerned about the DMR's new proposal regarding the "New Rights Application" section where the new issue of curtailing the continuing consequences in new right applications to three years has been introduced. The existing V8 draft agreement document specifically provides that continuing consequences in respect of new mining right applications will apply for the duration of the mining right. The fact that the DMR only provided the Chamber with its new proposal at the eleventh hour of the task team meeting on Monday 23 January 2017 and did not provide any time for presenting the draft document is most disconcerting.

The Chamber's mandate on the ownership element is very clear. We require the conversion of the V8 draft agreement into of a proper agreement document for signing by the Minister and the Chamber, letters from the Minister confirming the empowerment credits of mining companies and the reflection of the signed agreement in the Reviewed Mining Charter. At the meeting of the Committee of Principals on Friday 20 January 2017 it was agreed by the Principals that the Task Team should finalise the V8 agreement, the letters and progress the discussions on the non-ownership elements of the Reviewed Mining Charter. The DMR at the Task Team meeting on 23 January not only introduced a draft



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ownership section that does not reflect the V8 agreement, but also suggested that the Chamber do away with the request for the letters by the Minister. We do not agree that the DMR officials have the right to unilaterally change the mandate given by the Principals.

For the discussions to continue the Chamber insists on the following:

- the DMR must withdraw the draft ownership wording document that it gave the Chamber on 23 January 2017; and,
- the DMR should revert with draft wording for the ownership element that reflects the wording of the V8 agreement.

The Chamber then requires the conversion of the V8 agreement into an agreement for signing by the Minister and the Chamber, the Minister's letters confirming the empowerment status of the individual mining companies and the proper reflection of the agreement in the wording of the ownership element in the Reviewed Mining Charter.

I must reiterate that only once these requirements have been complied with will the Chamber be in a position to consider withdrawing the declaratory order court case.

On the non-ownership elements of the Reviewed Charter we still have material concerns regarding some of the DMR's proposals. The Chamber's Council has confirmed our mandate set out below.

Mining Transformation Development Agency: The MTDA is not the solution for the DMR's perceived industry skills woes. Government and stakeholders are considering rationalizing centers of expertise and improving the outcomes of skills development entities. The DMR should not act unilaterally by going in the opposite direction. Furthermore, the proposed funding of the MTDA from a portion of the designated skills funds and multi-national company supplier spend is still not supported.

Mine Community Development: A turnover based target for mine community development is highly problematic. We hope we can find a solution that meets the objectives of both the DMR and the industry.

Employment Equity: The DMR had already resolved prior to our recent discussions to reduce some of the sub-targets in recognition of the industry's demonstrable challenges in meeting them. The discussions on this element had used that as a departure point in considering the 5-year transition to meeting the targets set. The DMR's backtracking on the reduced sub-targets is a real challenge for the Chamber.

Procurement: While the industry supports building the local manufacturing base, we still have not been provided with any scientific basis for the setting of the targets for locally manufactured goods. Current government initiatives and incentives have not yet yielded the requisite manufacturing base,



and a satisfactory alignment between the capacity of local manufacturers and demand of the procuring mining companies has not been undertaken.

Reporting & Scorecard: The DMR persistent aversion to independent verification is concerning. While committing to better definitions, guidelines, measurement principles and periodic assessments is commendable, independent verification would ensure good governance and also would go a long way in restoring the industry's reputation.

While we have made progress on some of the non-ownership elements of the Charter, it appears from our perspective that the DMR and Chamber remain in fundamental disagreement on key issues. In this regard the Chamber will not support any statements at the Mining Indaba or in the SONA that agreement has been reached. If the DMR does go out into the public domain and make statements that an agreement is close or to cherry pick where we have agreed and exclude the areas of non-agreement on the non-ownership elements we will be forced to refute this in public. Whether or not the Chamber's Declaratory Order court case is withdrawn pursuant to compliance with the above requirements relating to the ownership element, the Chamber reserves the right to institute new court proceedings in regard to the above non-ownership elements.

I am very concerned regarding the events of the past week. The Chamber has approached the discussions with a solution seeking mind-set. I am not sure that these discussions can continue until we have a meeting of the minds on exactly what we are trying to achieve.

Yours sincerely,

Roger Baxter
Chief Executive
Chamber of Mines of South Africa.
Tel No: 011 498 7663
Email: rbaxter@chamberofmines.org.za

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STRICTLY CONFIDENTIAL DOCUMENT**OUTCOME OF THE BI-LATERAL DISCUSSION BETWEEN THE DMR AND THE COM
ON OWNERSHIP.****1. Background**

A Chamber delegation met with Minister Zwane and some of his Officials on 26 April 2016. Minister Zwane requested the Chamber's President, Mr Mike Teke, to report to the meeting the outcome of discussions that they had held on Sunday, 24 April 2016. Mr Teke informed the meeting that the Minister had offered that, if the Chamber were to withdraw the Declaratory Order case and agree to a new mining charter ownership target of 30%, government would be willing to recognise "the continuing consequences of previous empowerment deals".

The Chamber delegation responded by saying, on a without prejudice basis, that it would be prepared to accept a target of 28% subject to a number of in-principle provisos. The Minister subsequently revised his proposal to an ownership target of 29%. The Chamber delegation agreed with the proposal of 29% subject to the principles outlined in 2 below and indicated that they would take the proposal back to the Chamber's Council for consideration.

The 10-a-side meeting of 26 April established a Technical Task Team to propose modalities of resolving the dispute on the interpretation of the ownership element of the mining charter, including the introduction of the 29% threshold. Based on the extensive engagement of the Task Team, a set of principles has been developed for consideration by the Principals, in line with the proposed principles herein contained. The proposed modalities consider practical mechanisms to extricate a "win-win" solution for recognition of continuing consequences of previous deals for existing rights as well as consideration for delineating a sustainable model for new rights. These issues are elucidated below.

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In the pursuance of a common understanding, the parties agreed that it was important that the parties expressed their respective view for a transformed South African mining industry and as such, each of the parties expressed their respective views on the vision for industry as follows:

Department of Mineral Resources

The DMR's view on the transformation of the industry is located within the mutually symbiotic characteristic with inclusive, sustainable and competitive growth of the industry, consistent with the national developmental imperatives. **At the core of transformation is participation of black people in the mainstream economy broadly, and the mining industry in particular.** In this regard, transformation is the responsibility of government, business, Historically Disadvantaged South African (HDSA) entrepreneurs and other transformation beneficiaries, such employees and communities. It is in this context that the mining charter, as an instrument through which the transformation objective ought to be attained, must provide unambiguous technicalities that sufficiently address the issues of, inter alia:

- Meaningful and sustainable participation of HDSA in the ownership of mining industry, which is intended to de-racialise the historical ownership
- **Notwithstanding the spirit of free trade, participation of the HDSA in the ownership must be augmented responsibility to achieve policy objective. This is intended to mitigate against possibilities of free trade enabling the reversal of the gains made in transforming the industry**
- **Leverage the benefit from hindsight, appropriate instrument be introduced to effect tangible benefit to employees and communities**
- Provide for certainty of intent for investors, business, employees and communities alike and provide a basis for common narrative of a truly democratic South Africa success story

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In this context, the DMR asserts an urgent need for innovative solutions that effectively "*re-imagine*" the transformation of the sector in a manner that will secure competitive and sustainable development of the industry that remains in a state of sunshine for well over a century into the future.

The Chamber of Mines of South Africa

The Chamber's view is that although the initial objective of the founders of the Mining Charter of creating a critical mass of transformation that will become self-perpetuating and irreversible has been achieved, there is further work that needs to be done to arriving at this end goal of a transformed, competitive and prosperous South African mining sector.

The Chamber believes that there is no "one size fits all" solution to achieving its envisaged end game. The Chamber believes that the solution must be one that take cognisance of the following key elements: legacy issues (there has to be an acknowledgement of the past and learnings must be captured); competitiveness and growth (transformation must be pursued in conjunction with growth); the spirit of "doing the right thing" must be the central theme in how the solution is crafted; and the people's freedom of choice and trade must be recognised and protected.

2. Principles

The continuing consequences of existing and previous empowerment deals will be recognised as follows:

- 2.1 All historical transactions concluded in good faith that achieved the 26% empowerment target in respect of current right holders or mining companies will be recognised. Thereafter, such current holders of mining rights or mining companies will have three years to reach a revised empowerment target of 29%. All transactions which result in the current holders of mining rights or mining companies achieving the revised minimum empowerment target of

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29% will be recognised for the duration of the right. This principle does not apply to transactions which did not achieve the 26% empowerment target as at the date of the agreement.

- 2.2 In respect of existing mining rights (that is, all rights other than new mining rights) all deals implemented historically in good faith will be included or counted to determine the empowerment percentage. This includes continuing consequences of historical deals done on units of production basis, all historical BEE deals which formed the basis upon which new order mining rights were granted, share asset deals irrespective of whether the empowerment partners sold their stake or remain in the investment.
- 2.3 The empowerment can be at company level, asset level, cover all operations. This shall apply to deals done in good faith.
- 2.4 In the interest of meaningful economic empowerment, parties acknowledge that a model of multiple empowerment partners may be contrary to the basis on which the threshold of 25% + 1 for BEE empowerment was premised in order to protect minority interests. **Parties commit to explore appropriate mechanisms to structure empowerment in a manner that will achieve meaningful participation of black people in the ownership voting rights, economic interest and management control of mining entities, subject to other terms and conditions of regulatory requirements, such as the JSE regulations and the companies' Act.**
- 2.5 Regarding section 11 applications, if an empowered company (at 29% and in accordance with paragraph 2.1) transfers mining assets (including mining rights) to another empowered company (at 29%) there will be no requirement to re-empower. Section 11 approvals will recognise the "continuing consequences of the entity in question as stated in paragraph 2.1.

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The buyer (receiving holder) in this regard shall during the 3-years transitional period provided for by the mining charter, top up its BEE shareholding to 29% as agreed in paragraph 2.1 1.

- 2.6 Subject to a formal process, the DMR will provide each right holder or mining company, in accordance with paragraph 2.1, with a letter acknowledging the empowerment credentials of the rights holder or company, agreeing and accepting the percentage of empowerment for which the company or rights holder is recognised, and the continuing consequences of previous empowerment deals done in good faith.

3. **New Mining Rights**

New green-field projects will have a minimum empowerment target of 29%. The BEE ownership will be reviewed annually with the company's intent being to sustain the 29% and will be recognised for the duration of the right. In the event that the BEE wishes to exit, the holder's BEE percentage should not drop below 18%.

4. **Process to achieve the above**

The Chamber's declaratory order application in respect of *inter alia*, the interpretation of the ownership element of the Charter has not been set down. The parties undertake not to progress this matter pending the outcomes of the engagement process currently underway. In order to achieve the objectives set out herein, the parties agree to the following process:

- 4.1 The Minister will, subject to a formal process, issue written acknowledgement letters to each Mining Right holder recognizing the empowerment credentials of such holder, the percentage of empowerment of such holder, and the consequences of previous deals.

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- 4.2 The Minister will use his best endeavours to ensure that the draft Reviewed Mining Charter, 2016 incorporates the outcomes of the agreement between the parties herein.
- 4.3 The Chamber will, upon the gazetting of the finalized reviewed Charter which incorporates the outcomes of the agreement as set out in paragraph 4.2, withdraw its existing court application.
- 4.4 The parties will explore the methods to ensure that the objectives set out herein are not assailable by third parties which methods may include, without limitation, the embodiment of these objectives in a further MPRDA Amendment Bill

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Element	Detail of the Element and Targets	Chamber Views	Resolutions
1. Employment Equity	<ul style="list-style-type: none"> • Board: 50% black, 20% of which must be female. • Executive/Top Management: 50% black, 20% of which must be female. • Senior Management: 60% black, of which 30% must be female. • Middle Management: 75% black, of which 38% must be female • Junior Management: 88% black, of which 44% must be female • Core and Critical Skills: 40% black • Employees with disabilities: 2%. 	<ul style="list-style-type: none"> • Change of the designated group from HDSA to black, as it excludes white women who make-up up to 15% of EE contribution. • The proposed targets do not have regard to current workplace profiles. • Targets for people with disabilities should be inclusive of all races and not limited to Black persons as per the gazetted Charter. 	<ul style="list-style-type: none"> • Concern over the sub-targets notwithstanding extension from 3 to 5 years and progressive targets (targets aligned to the BBBEEA) In principle agreed to: • National and Regional EAP statistics would be taken into account • Critical that there is alignment of this element with EE Act and reporting
2. Human Resource Development	<ul style="list-style-type: none"> • The Gazetted Charter proposed the retention of the requirement for 5% of payroll to be invested towards skills development by mining right holders. • The Charter further required companies to invest 15% of the above mentioned 5% towards a Ministerial Skills Development Trust Fund. 	<ul style="list-style-type: none"> • The Chamber does not support the 15% of 5% leviable amount contribution towards a Ministerial Skills Fund and establishment of the MTDA. • Lack of clarity over the treatment of non-employee HRD expenditure • There are multiple private and government structures that have the mandate to drive these issues (MQA, IDC, NEF, Dept. of Small Business). • International benchmarking research from Dept Higher Education & Training shows that SA has too many centres of expertise. 	<p>In principle agreed to:</p> <ul style="list-style-type: none"> • 5% of leviable amount towards HRD • DMR to provide data on historic disproportionate allocation of skills expenditure by gender and race for discussion • HRD is beyond firm level and non-employee HRD expenditure is recognised and necessary • Consultation with Chamber members on alternative and voluntary contributions to the MTDA • Engagement on the structure, objects and funding of the MTDA (open mandate provided to 5-a-side by Minister to discuss

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DMR/COM Mining Charter discussion document [1. 02.17]

Element	Detail of the Element and Targets	Chamber Views	Resolutions
		<ul style="list-style-type: none"> Government has gazetted a proposal that 25% of skills spend be diverted to higher education. There are current discussions at NEDLAC looking at entirety of skills landscape regarding an independent skills agency looking at sectoral and cross-cutting skills. The National Skills Fund covers the same objectives as communicated by the DMR for the MTDA. The focus should rather be on utilising and/or fixing existing structures instead of creating new ones. 	<p>objectives, potential solutions and necessity of MTDA)</p> <ul style="list-style-type: none"> DMR to provide one pager brief on objectives of proposed MTDA <p>Not agreed to:</p> <ul style="list-style-type: none"> Establishment of the MTDA (Chamber) Allocation of 15% of the agreed 5% payroll to MTDA and 1% expenditure from MNC Chamber proposal for recognition of MHS training expenditure (DMR)
3. Mine Community Development	<ul style="list-style-type: none"> The Gazetted Charter requires mining right holders to annually contribute 1% of turnover towards mine community development. 	<ul style="list-style-type: none"> The 1% turnover equivalent to an additional royalty and rather propose 2% net profit after tax (NPAT) Concern over alignment of the Mine Community and SLPs 	<p>In principle agreed to:</p> <ul style="list-style-type: none"> Collaborative SLPs (PPP)-to improve impact DMR to develop implementation guidelines for SLPs and MCDs Explicit linkage and alignment between MCD contributions and SLPs <p>Not agreed to:</p> <p>Revenue vs NPAT (vs normalised earnings, operating profit, EBITDA), Open mandate to 5-a-side to look at practical solutions to arrive at a funding formula for community development</p>

DMR/COM Mining Charter discussion document [17.02.17]

Element	Detail of the Element and Targets	Chamber Views	Resolutions
4. Procurement	<p>Policy instruments to achieve broad based economic empowerment have not yielded desired outcomes-job creation:</p> <ul style="list-style-type: none"> ✓ Investment costs to set up manufacturing for capital goods not commercially sustainable; ✓ Limited volume of large body mining equipment in SA; ✓ Limited competitive advantage of old manufacturing plants abroad vs. a new plant; ✓ High current level of maintenance activities to save costs, thereby reducing volume of units; ✓ Fluctuating exchange rate which will compromise investment decisions; ✓ High import content of even locally based OEM's. 	<ul style="list-style-type: none"> • Clarity on measures to ensure supplier development meets progressive target. • Consider use of Total Measured Procurement Spend (TMPS) vs. actual spend (exclusion of items procured from companies from foreign domicile) • Increasing procurement from local BEE manufacturers is supported. • Proposed target of 70% locally manufactured goods is a marked change and increase from previous target of 40% BEE expenditure. Achievability of target is not evidence based. • Current Dept. of Trade & Industry initiatives and incentives have not yielding the desired outcomes. • Industry study on locally manufactured goods relating to mining at a nascent stage. • The manufacturing sector has shrunk from 22% of GDP in 1985 to 13% in 2016 and manufacturing value added growth at 2.9% p.a. is half that of China and India. Until a proper 	<ul style="list-style-type: none"> • Concerned about the targets notwithstanding the extension of the transitional period from 3 years to 5 years for compliance- concern over 70% capital goods target (60% local value add). • Concern about capacity, and dilution of the supplier base (SMME development vs economies of scale), concern over flexibility of elements: One size fits all approach rather than nuance across commodities (coal vs. Pt) • Concern that the targets can be easily subverted by suppliers • DMR to arrange engagement with suppliers and Chamber submission of best practice (Anglo case) • Concern about the 1% on MNE and the flow-through of costs to the sector, propose alignment to the equity equivalencts mechanism in the BBBEE Codes <p>In principle agreed to:</p> <ul style="list-style-type: none"> • The onus to verify local content lies with the suppliers • DMR to develop definitions for all criterion under this element

DMR/COM Mining Charter discussion document [1..J2.17]

Element	Detail of the Element and Targets	Chamber Views	Resolutions
		<p>analysis of the realistic targets that can be achieved for local manufacturing, it will be difficult for a proper target to be agreed.</p> <ul style="list-style-type: none"> • Examine the issue of enhanced recognition for SME inclusion • Supplier development initiatives /approaches have to be aligned to DTI prescripts • Clarity sought on recognition of those BEE entities that are above R100m threshold • Basis for calculations remains unclear and need clarity on discretionary and non-discretionary costs • Propose BEE Scorecard approach to align Charter with BEE codes requirements to eliminate dual reporting • Explore Equity Equivalent (MNC) programmes from other sectors to address MNC Supplier contribution 	<ul style="list-style-type: none"> • DMR agreed to provide a one page summary of all the current government initiatives to promote local manufacturing in the capital goods cluster. <p>Not Agreed :</p> <ul style="list-style-type: none"> • 70% blanket target for locally manufactured (capital) goods • 1% turnover by MNCs
5. Housing and Living Conditions	<p>Agreed</p> <ul style="list-style-type: none"> • This element has been omitted from the charter and is accordingly being strengthened under Housing and Living conditions standards, as provided for in Section100 (1)(b) of the MPRDA. • Transitional arrangements pertaining to mine workers housing and living conditions are provided for, pending the finalisation of the standards. 		

Element	Detail of the Element and Targets	Chamber Views	Resolutions
6. Sustainable development	<ul style="list-style-type: none"> The Gazette Charter omitted this element Revised Charter reintroduces this element Requirement for a 0.15% contribution of annual turnover towards R&D. 	<ul style="list-style-type: none"> Sustainable development issues dealt with by relevant legislation and inclusion as an element may lead to duplication of reporting R&D to be moved from Sustainable Development to HRD The 0.15% annual turnover contribution towards R&D is an additional tax burden on mining companies as not all companies spend on R&D due to nature of operations and business. Support of Academic institutions and R&D form part of the HRD element. <u>Environmental Management</u>: As of Dec 2014, the mining industry has been following the <i>One Environmental System</i> which requires that environmental issues in the mining industry be governed in terms of NEMA and its regulations, with the DMR being the competent authority. The Mining Charter is promulgated in terms of the 	<p>In principle agreed to:</p> <ul style="list-style-type: none"> DMR would drop the 0.15% requirement. Where a mining company is investing in R&D 70% of R&D spend must be utilised in the Country. 5 year transition period to enable that. DMR to provide Chamber with data on basis of 70% target Mechanisms to be developed to address capacity gaps in the transition period <p>Sustainable development as an element</p> <p>Need to engage on substance behind this element</p> <ul style="list-style-type: none"> Mine Health & Safety: Implementation of Tripartite Action Plan as articulated in the MHSC Summit Resolutions is not fully supported. Agreed that the DMR should engage the MHSC on what the specific activities should entail. Once engaged by the DMR; the MHSC Office will develop proposals for consideration by the MHSC Board. Adherence to Environmental Management Plan - provision for band of acceptable tolerance for non-compliance - DMR should reconsider inclusion. Concern over the environmental provisions and the indicators, alignment with NEMA provisions

DMR/COM Mining Charter discussion document [1.02.17]

Element	Detail of the Element and Targets	Chamber Views	Resolutions
		<p>MPRDA and with the environmental provisions being moved to NEMA; there is no enabling legislative mechanism for measuring environmental performance in the MPRDA.</p> <ul style="list-style-type: none"> • In order to assess the compliance level of the mining industry in relation to environmental management, a qualitative analysis or assessment of each individual environmental requirement in terms of the law needs to be undertaken. Measures implemented beyond the requirements of the law should also be taken into consideration. It will be impossible to come to a conclusion of a particular percentage level compliance with the current scorecard. Thus, making it difficult to formulate tangible indicators to allow for quantitative measurements of environmental compliance level for the mining industry. • On the other hand, companies with EMP's approved in terms of the MPRDA would be deemed to having obtained an 	

DMR/COM Mining Charter discussion document [17.02.17]

Element	Detail of the Element and Targets	Chamber Views	Resolutions
		environmental authorization in terms of NEMA. The Legal basis for inclusion of environmental issues is questionable and therefore the Chamber does not support the inclusion of this element in the Mining Charter.	
7. Applicability of the Mining Charter.	<ul style="list-style-type: none"> The Charter provides for 3 ring-fenced elements (Mine community development, HRD and Ownership) and mining right holders are required to maintain 100 percent compliance with these targets at all times for the duration of a mining right. 	<ul style="list-style-type: none"> 100 percent compliance at all times in respect of the ring-fenced elements is not feasible: Ownership, HRD, Mine Community Development Periodic Review of Targets Charter to provide exemptions for small and medium sized operations in line with National Small Business Amendment Act (26 of 2003) Establishment of sub-minimums 	<p>In principle agreed to:</p> <ul style="list-style-type: none"> Transparency in enforcement as aligned to the legislation Remedies for each of the ring-fenced elements have been discussed and recommended. Periodic assessments to be consulted with stakeholders. 100% compliance is justifiable if agreement is reached on each of the 3 priority elements <p>Not agreed to:</p> <ul style="list-style-type: none"> Further exemptions for small and medium sized operations (DMR)
8. Independent verification.	<ul style="list-style-type: none"> The Charter obliges right holders to report their levels of compliance annually and empowers the Minister to review the Charter as and when the need arises. 	<ul style="list-style-type: none"> Chamber is concerned about the absence of a verification provision in the Charter. 	<p>Not Agreed to:</p> <p>Provision for independent verification (DMR). The responsibility to evaluate, monitor and enforce the law lies with the DMR.</p> <p>Agreed</p>

DMR/COM Mining Charter discussion document [17.02.17]

Element	Detail of the Element and Targets	Chamber Views	Resolutions
			<ul style="list-style-type: none">• Develop guidelines and measurement principles up front• Periodic assessments will help track the progress over time.
9. General	<ul style="list-style-type: none">• DMR has undertaken a socio-economic impact assessment relating to the Mining Charter, which will be shared with the Chamber.		

DMR/COM Mining Charter discussion document (Minister's Version)

Element	Detail of the Element and Targets	Chamber Views	Resolutions
1. Employment Equity	<ul style="list-style-type: none"> • Board: 50% black, 20% of which must be female. • Executive/Top Management: 50% black, 20% of which must be female. • Senior Management: 60% black, of which 30% must be female. • Middle Management: 75% black, of which 38% must be female • Junior Management: 88% black, of which 44% must be female • Core and Critical Skills: 40% black • Employees with disabilities: 2%. 	<ul style="list-style-type: none"> • Change of the designated group from HDSA to black, as it excludes white women who make up 15% of EE contribution. • "The proposed targets for all levels is too high and unrealistic." • Targets for people with disabilities should be inclusive of all races and not limited to Black persons as per the gazetted Charter. 	<p>In principle agreed to:</p> <ul style="list-style-type: none"> • Retain the mining charter targets aligned to the BBBEEA and implementation of the proposed targets progressively over a period of 5 years.
2. Human Resource Development	<ul style="list-style-type: none"> • The Gazetted Charter proposed the retention of the requirement for 5% of payroll to be invested towards skills development by mining right holders. • The Charter further required companies to invest 15% of the above mentioned 5% towards a Ministerial Skills Development Trust Fund. 	<ul style="list-style-type: none"> • The Mining Transformation Development Agency (MTDA): • The Chamber does not support the 15% (of 5% leviable amount) contribution towards a Ministerial Skills Fund and establishment of the MTDA. • Mandatory training not recognised in the dti codes but recommend its recognition as part of the 15% payroll allocation. • Recognition of MQA and its programmes • Lack of clarity over the treatment of non-employee HRD expenditure 	<p>In principle agreed to:</p> <ul style="list-style-type: none"> • 5% of payroll towards HRD • DMR to provide data on historic disproportionate allocation of skills expenditure by gender and race • Chamber to provide gender and race breakdown of 6,000 existing bursars • HRD is beyond firm level and non-employee HRD expenditure is recognised and necessary • Consultation with Chamber members on voluntary contributions to the MTDA <p>Not agreed to:</p> <ul style="list-style-type: none"> • Establishment of the MTDA (Chamber)

DMR/COM Mining Charter discussion document (Minister's Version)

Element	Detail of the Element and Targets	Chamber Views	Resolutions
			<ul style="list-style-type: none"> Allocation of 15% of the agreed 5% payroll to MTDA, loss of direct control Chamber proposal for recognition of MHS training expenditure
3. Mine Community Development	<ul style="list-style-type: none"> The Gazetted Charter requires mining right holders to annually contribute 1% of turnover towards mine community development. 	<ul style="list-style-type: none"> The 1% turnover equivalent to an additional royalty and rather propose 2% net profit after tax (NPAT) Concern over alignment of the Mine Community and SLPs 	<p>In principle agreed to:</p> <ul style="list-style-type: none"> Collaborative SLPs (PPP) DMR to develop implementation guidelines for SLPs and MCDs Explicit linkage between MCD and SLPs Maintain 1% of revenue projection of two and half years, applicable to a Social and Labour Plan (SLP's) for five (5) years cycle with provision for remedies in case of adverse economic environment.
4. Procurement	<p>Policy instruments to achieve broad based economic empowerment have not yielded desired outcomes-job creation:</p> <ul style="list-style-type: none"> ✓ Investment costs to set up manufacturing for capital goods not commercially sustainable; ✓ Limited volume of large body mining equipment in SA; ✓ Limited competitive advantage of old manufacturing plants abroad vs. a new plant; ✓ High current level of maintenance activities to save costs, thereby reducing volume of units; 	<ul style="list-style-type: none"> Concern on the availability of baselines on the current capacity Clarity on measures to ensure supplier development meets progressive target. Verification of local content responsibility of suppliers not the mining industry (consider capacity of the SABS) Consider use of Total Measured Procurement Spend (TMPS) vs. actual spend (exclusion of items 	<p>In principle agreed to:</p> <ul style="list-style-type: none"> Maintain proposed targets and extend transitional period from 3 years to 5 years for compliance- concern over 70% capital goods target (60% value add). The onus to verify local content lies with the suppliers <p>Not agreed to:</p> <ul style="list-style-type: none"> Chamber proposal to use of Total Measured Procurement Spend instead of Actual Spend

DMR/COM Mining Charter discussion document (Minister's Version)

Element	Detail of the Element and Targets	Chamber Views	Resolutions
	<ul style="list-style-type: none"> ✓ Fluctuating exchange rate which will compromise investment decisions; ✓ High import content of even locally based OEM's. 	procured from companies from foreign domicile	
5. Housing and Living Conditions	<p>Agreed</p> <ul style="list-style-type: none"> This element has been omitted from the charter and is accordingly being strengthened under Housing and Living conditions standards, as provided for in Section 100 (1)(b) of the MPRDA. Transitional arrangements pertaining to mine workers housing and living conditions are provided for, pending the finalisation of the standards. 		
6. Sustainable development	<ul style="list-style-type: none"> The Gazette Charter omitted this element Revised Charter reintroduces this element Requirement for a 0.15% contribution of annual turnover towards R&D. 	<ul style="list-style-type: none"> Sustainable development issues dealt with by relevant legislation and inclusion as an element may lead to duplication of reporting R&D to be moved from Sustainable Development to HRD The 0.15% annual turnover contribution towards R&D is an additional tax burden on mining companies as not all companies spend on R&D due to nature of operations and business. Support of Academic institutions and R&D form part of the HRD element. 	<p>In principle agreed to:</p> <ul style="list-style-type: none"> Where a mining company is investing in R&D 70% of R&D spend must be utilised in the Country. Mechanisms to be developed to address capacity gaps in the transition period <p>Not Agreed to remove sustainable development as an element.</p>
7. Applicability of the Mining Charter.	<ul style="list-style-type: none"> The Charter provides for 3 ring-fenced elements (Mine community development, HRD and Ownership) 	<ul style="list-style-type: none"> 100 percent compliance at all times in respect of the ring-fenced elements is not feasible: 	<p>In principle agreed to:</p> <ul style="list-style-type: none"> Transparency in enforcement as aligned to the legislation

DMR/COM Mining Charter discussion document (Minister's Version)

Element	Detail of the Element and Targets	Chamber Views	Resolutions
	and mining right holders are required to maintain 100 percent compliance with these targets at all times for the duration of a mining right.	<p>Ownership, HRD, Mine Community Development</p> <ul style="list-style-type: none"> • Periodic Review of Targets • Charter to provide exemptions for small and medium sized operations in line with National Small Business Amendment Act (26 of 2003) • Establishment of sub-minimums 	<ul style="list-style-type: none"> • Remedies for each of the ring-fenced elements have been discussed and agreed. • Periodic assessments to be consulted with stakeholders <p>Not agreed to:</p> <ul style="list-style-type: none"> • Further exemptions for small and medium sized operations. • Establishment of sub-minimums
8. Independent verification.	<ul style="list-style-type: none"> • The Charter obliges right holders to report their levels of compliance annually and empowers the Minister to review the Charter as and when the need arises. 	<ul style="list-style-type: none"> • Chamber is concerned about the absence of a verification provision in the Charter. 	<p>Not Agreed to:</p> <p>Provision for independent verification. The responsibility to evaluate, monitor and enforce the law lies with the DMR.</p>

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CHAMBER OF MINES
of South Africa

T: +27 11 498 7100
E: info@chamberofmines.org.za

5 Hollard Street, Johannesburg 2001
PO Box 61809, Marshalltown 2107

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PRIVATE & CONFIDENTIAL

24 March 2017

Mr David Msiza
Acting Director General
Department of Mineral Resources
Trevenna Campus
Cnr Meintjies and Francis Baard Streets
Sunnyside
Pretoria

E-mail: David.Msiza@dmr.org.za

Dear DG Msiza

NON-OWNERSHIP ELEMENTS IN THE REVIEWED MINING CHARTER

Thank you for your letter dated 20 March 2017, which reflected the request by the DMR for further input on three important elements of the DMR's reviewed Mining Charter. In the short space of time available we have done our best to provide our point of view on the three areas and why we believe the DMR's targets are either not practical or not necessarily possible. Let me state at the outset that the DMR has not provided any documented substantiation on any of the proposed targets for employment equity or capital and consumable goods targets, nor has the DMR provided the expected written substantiation of why the DMR believes the Mining Transformation Development Agency should be established, its proposed modus operandi or governance structures.

We address each of the three areas raised in your letter in the order requested.

Employment equity

The Chamber and its members remain committed to workplace diversity and equitable representation at all levels to promote social cohesion, transformation and the competitiveness of the sector. This is demonstrated by our overwhelming compliance with the targets of the 2010 Mining Charter.

The DMR's proposed employment equity targets are simply too steep and not realistically achievable by the sector in the proposed time frames. This is despite the DMR providing a five year transition period to reach them, because the proposed targets do not have regard to the current workplace profiles and industry dynamics. The DMR has not provided the Chamber with any substantive basis for the adoption of the employment equity targets for the sector other than to say that they are on par with the Broad Based



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Black Economic Empowerment Codes (BBBEE Codes) and essential for alignment therewith.

The table below is a comparison of the Reviewed Mining Charter (RMC) targets (April 2016) against the mining industry performance on employment equity as per the Commission for Employment Equity reports (2011 to 2015), with 5-year and 10-year projections.

The following conclusions can be drawn from the information:

- Unless the industry makes a dramatic turnaround and achieves spirited growth (between 2-8% or more), the sector will not be able to meet the majority of its ten year employment equity targets by 2027.
- A five year transition period to meet the proposed targets is a major challenge as the targets are unachievable within that period in a low and normal growth scenario, unless the actual targets are reduced.
- The headline targets for "black people" and sub-targets "black females" pose serious challenges in all of the categories below unless the industry has strong growth.
- The DMR's first priority should be to grow the industry. A growing industry with the appropriate transformation framework means a more inclusive and transformed industry.

Reviewed Mining Charter	5-yr projections (to 2022)			10-yr projections (to 2027)			Mining 2015	Mining 2014	Mining 2013	Mining 2012	Mining 2011
	Low growth	Normal growth	Strong growth	Low growth	Normal growth	Strong growth					
Executive/Top Management: 50% black	22,4%	28,9%	57,3%	23,8%	36,2%	75,7%	21,70%	19,40%	21,60%	18,80%	17,60%
Executive/Top Management: 25% of which must be female (i.e.10%)	7,0%	15,3%	19,5%	7,2%	27,4%	41,3%	6,80%	6,40%	6,70%	4,30%	4,30%
Senior Management: 60% black	24,8%	30,4%	41,4%	25,3%	36,0%	61,2%	24,00%	22,20%	21,60%	20,80%	21,00%
Senior Management: 30% black female. (i.e.18%)	10,1%	11,1%	17,4%	13,9%	16,4%	35,6%	6,40%	6%	5,20%	5,20%	4,70%
Middle Management: 75% black	32,6%	46,1%	51,2%	33,3%	60,4%	72,3%	31,60%	31,80%	30%	28%	29,20%
Middle Management: 38% black female (i.e.28%)	11,6%	16,3%	28,5%	11,8%	21,4%	55,6%	11,20%	10,70%	11,20%	9,80%	9,10%

Assumptions:

Low growth scenario

- The mining industry grows at an average of 0.45% annually

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Normal growth scenario

- Annual growth in the mining industry averages between 2% and 8%

Strong growth scenario

- The average growth is between 9% and 16%

What we know about the mining industry:

- It requires highly specialised skills.
- There is intra-movement of skills possible i.e. movement of skilled labour from one mining industry to the other; however mobility of labour from other industries to and from the mining industry is limited because of its specialised nature.
- Increasing the proportion of black labour in the sector is a function of two things: natural attrition and growth in the sector:
 - Natural attrition - people leaving through retirement or because they've found jobs in other industries. Of the two, movement as a result of people finding new jobs can speed up the process. However, because the mining industry is highly specialised labour tends to move within the industry itself.
 - Growth in the sector has been erratic. Unless something drastic is done, the sector is set for a difficult period
- The Chamber acknowledges that the mining industry in the past had a legacy predicated on race-based recruitment, promotions and skills development to the detriment of black people and women in particular. It further recognises that whilst the industry of today is markedly different than that of the past decades; more still needs to be done to ensure adequate representation of designated groups at all levels of mine operations, in particular key strategic decision making positions.
- The DMR, in its 2014 assessment report of the Mining Charter implementation, asserts: "Prior to the introduction of the Mining Charter, female representation in the mining industry was insignificant. The 2004 Mining Charter set a target of 10% for representation of women in mining by 2009, however, only 6% female representation was achieved. The overall representation of women in the mining industry has increased to 10.5% by 2014. The reported data shows that there is still a long way to go before women are fully represented in the mining industry."
- Whilst the industry has met and in some cases exceeded the targets in the 2010 Mining Charter there are limitations in this area; in particular the promotion of black females in middle, senior management and executive positions. Much of the focus has been on programmes targeted towards meeting the target of 10% women participation (inclusive of white females) for Women in Mining projects. It would assist the industry to utilise provincial EAP targets as per the Employment Equity Act with progressive targets over 5 years. These targets should be more realistic in line with industry workplace profiles and aligned to regional EAP statistics as reported by the Commission on Employment Equity annually.
- The pipeline of skills emerging from the universities is encouraging. For example, 32% of the students doing mining engineering at Wits University are black female. Given the time taken to develop these female engineers and to ensure that they are recruited, absorbed into the mining workplace and retained in mining, there are significant constraints to realizing the DMR targets.

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Other engineering fields have a greater bias against females (DHET), and mining is doing relatively better on a percentage basis.

Procurement targets

The industry supports the promotion of local manufacturing if it is done in a holistic manner looking at, among other things, supply, local and international demand, incentives and other key factors. The DMR has retained its differentiation and targets for goods (capital and consumable) and services, which is not aligned to the BBBEE Codes and has not provided clear definitions and guidance on calculations, nor its justification for not aligning with the BBBEE Codes.

The Chamber does not support the 70% blanket target for locally manufactured capital and consumable goods from BEE compliant companies as this target is not achievable for a number of minerals. This new formulation of 70% locally manufactured goods from BEE compliant entities is a marked change and increase from the previous target of 40% BEE expenditure and is untested. Any evaluation of the procurement target of 70% must have as its base a definition of what the 100% consists of. This is crucial to understand how such a target compares with the 'base line' (or current import propensity) and for the calculation of compliance. The definition of the base is uncertain.

Mining procurement of capital goods includes intermediate inputs and fixed capital investment. In 2015, the mining sector spent R90 billion in capital investment, of which 7% (R6 billion) was transport equipment and 53% (R 47 billion) was machinery and equipment. Various estimates suggest that the import component of capital goods varies from about 32% in gold to the 40%-50% level in open cast mining (iron ore and coal). Essentially, the import propensity (import multiplier for every R1million additional mining production) differs from one commodity to the next in the sector. So while the gold sector may be closer to being able to achieve a 70% target for locally manufactured capital goods, other minerals are not in the same category.

The contention is that these imported inputs are of a specialized nature, most likely not available in SA. In essence, South Africa is fabricating capital goods in a number of niche areas, but most of the heavy large scale equipment such as large scale rear dump hauler trucks (>60 tons) are imported (most are imported in kits and reassembled in South Africa). Looking at the practical example of dump trucks, the major South African producer Bell produces dump trucks up to 55 tons capacity. Largescale open cast mines would use multiple dump trucks at 170 tons or greater than 200 tons, which are not made by Bell. Global suppliers of this equipment including Komatsu, Caterpillar, etc., do not directly manufacture in South Africa.

The major challenge that South Africa faces is that the South African and African markets are not yet big enough to justify the establishment of manufacturing plant by some of the big equipment manufacturers from an economies of scale and market perspective. They would want a large and growing market, sufficient economies of scale and a competitive tax, legal and operating environment to manufacture capital equipment at competitive rates.

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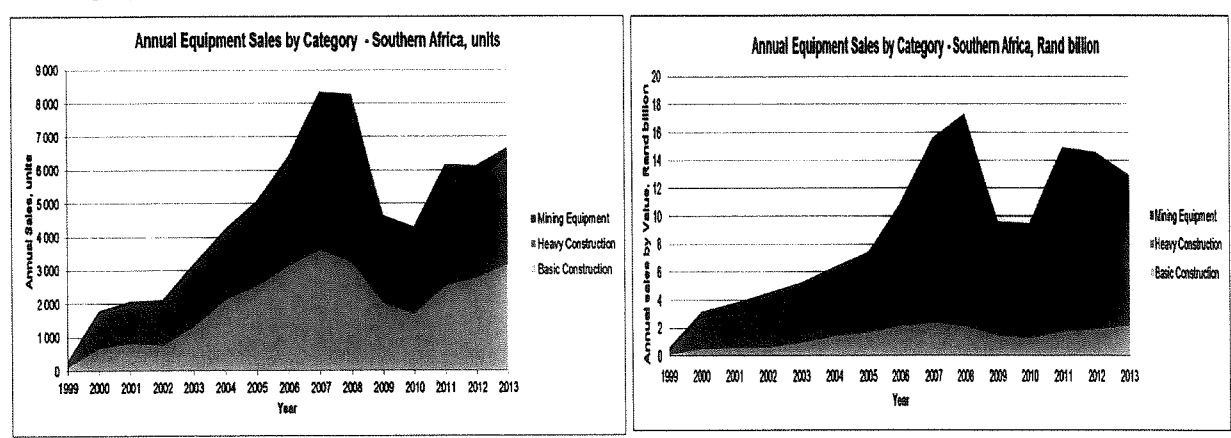
The South African market for mining equipment is small relative to the world market and therefore makes the production of specialized equipment at small scale for the SA market uneconomical.

Region	2017
North America	13
Western Europe	5
Asia/Pacific	66
Central & South America	8
Eastern Europe	4
Africa/Middle East	5

The share of Africa (including South Africa) and the Middle East of the world market demand for mining equipment is in the order of 5%. This is corroborated by the mainly SA producer of some specialized earthmoving equipment (Bell) that only 3% of its market for articulated dump trucks are in Southern Africa, and would therefore move a large portion of production to its facility in Germany. (Gary Bell, Sunday Times, 3 March 2017).

Source: Freedonia Group Inc; 2016

The international trend for the production of equipment closest to the regional markets has been confirmed by Dr Gotthard Wolf from the TU Bergakademie in Freiburg Germany at a recent international Metals Castings Conference in Johannesburg (March 2017). While production takes place in specific regions, close to suppliers of components, volumes of sales follow the markets mainly indicated by gross domestic product trends. The size of the SA market for heavy equipment is shown in the graphs below, by number and value.



Source: The Construction & Mining Equipment Suppliers' Association; 2014

Specifying a 70% capital goods target for local procurement by mining companies by local manufacturers will end up potentially penalising certain minerals where the large scale capital equipment manufacturers do not see the business case for establishing manufacturing facilities in South Africa. From this perspective a variation in the capital goods target (lower targets for certain minerals) would be more practical and appropriate.

Formulation for community investment target

The revised DMR proposal for contributions to mine community development of 1% of turnover over a 2.5 year period (i.e. 0.4% per annum) is a reduction from the 1% of annual turnover proposal of

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April 2016. However, it is still equivalent to a royalty being charged on an *ad valorem* basis and is the most regressive form of a tax, as even loss-making mines would be forced to contribute. The reduction of the target to 0.4% p.a. does not detract from the fact of it being revenue based and still amounts to c.R1.3bn (based on PWC 2015 data). The big challenge for the mining industry is that specific targets of community investment is not linked to the ability to pay.

In 2014 and 2015 the industry made an aggregate loss in each of these years as the companies battled to survive. A gross revenue formation in those years would have added R3,1 billion onto the cost structure of the companies, potentially pushing some over the precipice. At the same time a pure profits based formulation would have realized limited community spend in 2015 and 2016 because the industry was loss-making.

A more practical measure would be to look at a specific percentage of earnings before interest and taxes (EBIT) or earnings before interest, taxes, depreciation and amortization (EBITDA) as shown in the following table.

		R 'm				
		2016	2015	2014	2013	2012
As % of revenue (1% over 2,5 years)	0.4%	1,604	1,546	1,501	1,536	1,455
As percentage of net profit	2.0%	-	46	115	578	1,395
As percentage of EBITDA	1.0%	795	865	1,148	1,064	1,320
As percentage of EBIT	1.5%	433	657	1,136	972	1,513
As percentage of cash flow from operations	1.2%	997	858	950	958	1,442

The Chamber would support a reasonable earnings before interest and taxes (EBIT) based target for commitments to community development.

I hope this contribution will assist the DMR in realising practical targets for the Reviewed Charter.

Yours sincerely,

Roger Baxter
Chief Executive
Chamber of Mines of South Africa

MEETINGS WITH CHAMBER OF MINES ON THE DRAFT REVIEWED CHARTER.

DATE	VENUE	ITEM	ATTENDEES
1. 31 st March 2016	DMR Exco Boardroom	Draft Reviewed Mining Charter	MIGDETT members
2. 26 th April 2016	Johannesburg Country Club	Draft Reviewed Mining Charter	DMR & CHAMBER
3. 4 th May 2016	DMR Exco Boardroom	Draft Reviewed Mining Charter.	DMR & CHAMBER
4. 08 th July 2016	Exco Boardroom.	Draft Reviewed Mining Charter	DMR & CHAMBER workshop
5. 18 th July 2016.	DG's Boardroom.	Draft Reviewed Mining Charter	DMR & CHAMBER Executives

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6. 18 th October 2016	Manhattan Hotel (Pretoria)	Draft Reviewed Mining Charter	DMR & CHAMBER (workshop)
7. 17 th January 2017	Diep in die Berg	Draft Reviewed Mining Charter	DMR & CHAMBER (Principals meeting)
8. 18 th January 2017	DMR Boardroom	Draft Reviewed Mining Charter	DMR & CHAMBER (legal teams)
9. 19 th January 2017	DMR Boardroom	Draft Reviewed Mining Charter	DMR & CHAMBER (legal teams)
10. 20 th January 2017	Diep in die Berg	Draft Reviewed Mining Charter	DMR & CHAMBER (Principals meeting)
11. 23 rd January 2017	DMR boardroom	Draft Reviewed Mining Charter	DMR & CHAMBER (Technical meeting).

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12. 15 th February 2017	DMR boardroom	Draft Reviewed Mining Charter	DMR & CHAMBER (Legal Teams meeting)
13. 17 th February 2017	Diep in die Berg.	Draft Reviewed Mining Charter	DMR & CHAMBER (Principal meeting)
14. 20 March 2017	Diep in die Berg	Draft Reviewed Mining Charter	DMR & CHAMBER (Principals meeting)

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RECORD OF ENGAGEMENTS BETWEEN DMR AND CHAMBER OF MINES ON THE MINING CHARTER, 2017

Background

The Minister of Mineral Resources published the draft Reviewed Broad-Based Black Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry on 15th April 2016, in the Gazette (Mining Charter, 2017) for a period of 30 (thirty) days. The purpose and intent of the gazette publication was to solicit written representations, on the Mining Charter 2017, the Government instrument designed to effect broad based and meaningful transformation of the mining and minerals industry, from stakeholders and interested and affected parties.

The gazette publication was informed primarily by the Constitutional mandate conferred on the Minister, as the executive authority responsible for mineral resources in terms of sections 9 and 85 of the Constitution, to develop and implement national policy on transformation measures for the mining and minerals industry on behalf of the State. The Minister's mandate also derives from the empowering provisions of the MPRDA which include amongst others, sections 2, 23 and 100 dealing with the transformation objectives for the South African mining and minerals industry.

The objects of the Mining Charter 2017, are to: Promote equitable access to the nation's mineral resources to all the people of South Africa; Substantially and meaningfully expand opportunities for black people to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources; Utilise and expand the existing skills base for the empowerment of black people and to serve the community; Promote employment and advance the social and economic welfare of mine communities and major labour sending areas; and Promote beneficiation of South Africa's mineral commodities.

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Section 100 empowers the Minister to develop the Mining Charter and implicit in the power to develop the Charter is the power to amend and review the Charter from time to time. The Minister's mandate is further informed by the need to harmonise and integrate Government policies to remove ambiguities in respect of interpretation and create regulatory certainty. In this regard the Mining Charter 2017, is harmonized with, amongst others, the provisions of the Broad-Based Black Socio-Economic Empowerment Act, 2003 (Act No. 53 of 2003), the Codes of Good Practice (DTI Codes) and the Employment Equity Act, 1998.

The Department received about sixty (60) written substantial submissions on the draft Reviewed Mining Charter, 2016, from interested and affected parties including Organised business, mining companies, organised labour, legal fraternity, non-profit and community based organisations, black person shareholders, communities, public interest groups, research institutions, financial institutions, youth formations, system developers, capital equipment suppliers, consulting companies, trade associations, transaction advisors and Government Departments/institution.

The Department engaged with the abovementioned stakeholders on their written submissions for a period spanning over 30 days. In addition the Department consulted extensively with the Chamber of Mines for a period of 12 months (March 2016-March 2017) as reflected in the table below. The public interest and response to the draft Reviewed Charter is symbolic and reinforces the importance of Government's transformation agenda for the South African mining and minerals industry. The Department considered all inputs and comments received and revised the Mining Charter accordingly.

The following tables represents issues discussed during consultations with the Chamber of Mines.

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MINING CHARTER WORKSHOP

DATE: 26 APRIL 2016

VENUE: JOHANNESBURG COUNTRY CLUB

AGENDA: DISCUSS THE REVIEWED MINING CHARTER ELEMENTS

ATTENDEES: ATTENDANCE REGISTER ATTACHED

Element	Details of element and target	Chamber's view	DMR's position
1 Ownership	<p>The ownership element requires the following:</p> <ul style="list-style-type: none">• Achievement of a minimum target of 26% ownership to enable meaningful economic participation of black people taking into account the provisions of section 37(2) of the Companies Act, 2008 (Act No. 71 of 2008);	<ul style="list-style-type: none">• Without prejudice basis, Chamber was prepared to accept a target of 28% subject to number of principle provisions. Chamber indicated that they will take the new proposal back to their Council.	<p>The Department proposed 30% ownership target on condition that Chamber withdraws the declaratory.</p> <p>The department expressed willingness to recognise the continuing consequences of previous deals if the above is accepted.</p>

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- The 26% stake shall be allocated in not less than a minimum of 5 % shares equitably distributed amongst the black workers, black entrepreneurs and the community respectively.
- The aforementioned minimum community participation and workers stake shall be held in a trust created by the community and the workers respectively and registered with the Master of the High Court with jurisdiction.
- The Trust must be constituted in terms of the Trusts Property Control Act 57 of 1998 as amended and report to the to the South African Revenue Services and the

DMR settled for 29% ownership target.

It was resolved that a 10-a side technical task team should convene to propose modalities on the interpretation of the ownership element and introduction of the 29% threshold.

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Department of Mineral Resources.

- A community and workers Trust must include representations from the traditional authorities and the Union respectively
- Shareholders of the black people empowerment stake must create Special Purpose Vehicle (SPV) to manage the 26% black economic empowerment stake.
- Each transaction must register an SPV
- There must be a BBEE transaction for each mining right granted and one SPV for each empowerment transaction.
- The mining right holders must with the concurrence of the

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BEE partners consolidate the empowerment transactions with the prior written consent of the minister.

- The aforementioned SPV must register its own Memorandum of Incorporation (MOI) to regulate the black economic participation stake in equal shares amongst the black workers, black entrepreneurs and the community consistent with the Companies Act.
- The MOI for the SPV must address the following issues;
 - (i) appointment of joint representative;
 - (ii) allocation of voting rights in respect of

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both the special and
ordinary resolutions;

(iii) dispute resolution
mechanism; and

(iv) any other matter
prescribed by the
Companies Act.

- The only offsetting under the
ownership element is against
the value of beneficiation as
provided for by section 26 of
the MPRDA and elaborated in
the mineral beneficiation
framework.

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MINING CHARTER WORKSHOP: BETWEEN DMR AND CHAMBER OF MINES

DATE: 08 JULY 2016

VENUE: DMR EXCO BOARDROOM

AGENDA: DISCUSS THE REVIEWED MINING CHARTER ELEMENTS

ATTENDEES: ATTENDANCE REGISTER ATTACHED

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
1. Ownership.	<p>The ownership element requires the following:</p> <ul style="list-style-type: none">• Achievement of a minimum target of 26% ownership to enable meaningful economic participation of black people taking into account the provisions of section 37(2) of the Companies Act, 2008 (Act No. 71 of 2008);• The 26% stake shall be allocated in not less than a minimum of 5 % shares equitably distributed amongst the <u>black</u>	Not discussed.	DMR is not in apposition to discuss ownership element due to pending court case and principal's engagements.

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>workers, black entrepreneurs and the community respectively.</p> <ul style="list-style-type: none"> • The aforementioned minimum community participation and workers stake shall be held in a trust created by the community and the workers respectively and registered with the Master of the High Court with jurisdiction. • The Trust must be constituted in terms of the Trusts Property Control Act 57 of 1998 as amended and report to the South African Revenue Services and the Department of Mineral Resources. • A community and workers Trust must include representations from the traditional authorities and the Union respectively • Shareholders of the black people empowerment stake must create Special Purpose Vehicle (SPV) to manage the 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>26% black economic empowerment stake.</p> <ul style="list-style-type: none"> • Each transaction must register an SPV • There must be a BBBEE transaction for each mining right granted and one SPV for each empowerment transaction. • The mining right holders must with the concurrence of the BEE partners consolidate the empowerment transactions with the prior written consent of the minister. • The aforementioned SPV must register its own Memorandum of Incorporation (MOI) to regulate the black economic participation stake in equal shares amongst the black workers, black entrepreneurs and the community consistent with the Companies Act. • The MOI for the SPV must address the following issues; 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(v) appointment of joint representative;</p> <p>(vi) allocation of voting rights in respect of both the special and ordinary resolutions;</p> <p>(vii) dispute resolution mechanism; and</p> <p>(viii) any other matter prescribed by the Companies Act.</p> <ul style="list-style-type: none"> The only offsetting under the ownership element is against the value of beneficiation as provided for by section 26 of the MPRDA and elaborated in the mineral beneficiation framework. 		
2. Beneficiation	<ul style="list-style-type: none"> Mining Charter provides for a mechanism for companies to offset up to 11 percentage of the 26% of the ownership reserved for black people. 	Not discussed.	Both parties agreed not to discuss this element.
3. Human Resource Development (HRD)	<ul style="list-style-type: none"> Mining Industry must invest 5% of annual payroll essential skills development activities such as artisanal , bursaries, literacy and numeracy and 	<ul style="list-style-type: none"> Chamber view was that a percentage should be spent on employees at lower ranks and universities. 	The department welcomes the proposal and will be considered just like any other mining industry stakeholder, where necessary will be

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>reflective of proportional representation, but mandatory skills levy;</p> <ul style="list-style-type: none"> The 5% annual payroll for skills development shall include support for South African based academic institution, research and development initiative intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation. Invest 15% of the above mentioned 5% payroll levy to the Ministerial Skills Development Trust Fund. A mining company may make representations to the Minister for exemption from aspects of this requirement in the event of having partnered and supported State 	<ul style="list-style-type: none"> The wording on this element is not clear and need to be reworked with regards to the proposed 5%. Proposed that HRD to be considered as priority element. It raised its opposition towards to the proposal that 15% of the 5% annual payroll be contributed towards ministerial skills development fund. 	considered to adjust the proposed document.

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>owned entity (e.g. Mintek) in respect of research and development.</p> <ul style="list-style-type: none"> The trustees of the Ministerial Skills Development Trust Fund shall include stakeholders from organised business, organised labour and Government. 		
4. Mine Community Development	<ul style="list-style-type: none"> The Gazetted Charter requires mining right holders to annually contribute 1% of turnover towards mine community development. 	<ul style="list-style-type: none"> It proposed that a maximum of 2% Net Profit After Tax be contributed towards Socio-Economic development It also proposed that a direct linkage between Mine Community Development contributions and SLP's. 	<p>The mining industry already claimed to have achieved contribution which exceeded the target that was equivalent to the proposed 1% contribution the use of annual turnover is intended to avoid manipulation by mining industry.</p> <p>The proposed targets for mine community development are mandatory and form part of the social license to operate.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
			DMR view is that non-monetary contribution is discretionary and will be difficult to implement and measure and as such must be regarded as corporate social investment.
5. Procurement	<ul style="list-style-type: none"> The element proposed that "a mining right holder must ensure that procurement policies and actual procurement aligns with: <p>Capital goods:</p> <ul style="list-style-type: none"> To procure a minimum of 60% locally manufactured capital goods from BEE compliant manufacturing companies, 30% of the 60% must preferably be given to small business development which are BEE compliant and a minimum of 10% of the 30% must be reserved for the BEEE compliant enterprise development. <p>Consumables:</p>	<ul style="list-style-type: none"> Proposed that Capital & Consumables must be combined and referred to as Goods. Guidelines on procedure to engage SABS by the Mines, to avoid inconsistency. Local goods will remain a challenge, the biggest mines spent is on machinery and most of them are not manufactured locally. Services will not be a challenge. 	<p>The onus to verify local content lies with the suppliers.</p> <p>DMR agreed to consider the collapsing of capital and consumables being referred as goods.</p> <p>DMR has conducted a SEIAS and will be published and everyone will have access to it. Government will look at SABS capacity and where necessary improve the capacity.</p> <p>DMR is working with DTI to ensure that mining companies</p>

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> • A mining right holder to procure a minimum of 70% of locally manufactured consumables from BEE compliant manufacturing companies. • 30% of the above 70% must be given to small business development which are BEE compliant and a minimum of 10% of the 30% must be reserved for BEE compliant enterprise development. <p>Services:</p> <ul style="list-style-type: none"> • A mining right holder must procure a minimum of 80% of services from BEE compliant and locally based companies. • A minimum of 40% of the above 80% must be reserved for BEE compliant, a minimum of 10% of 40% must be reserved for BEE compliant. • Mining right holders must utilize the South African based facilities for analysis 	<ul style="list-style-type: none"> • The targets of local manufactured goods should consider the country's readiness, it should be thought carefully. • DMR must set realistic targets on the Charter. • Can DMR share the SEIAS with the Chamber, • Procurement to be a priority element. • Multinational companies are taxed twice because of the DTI Codes and the mining charter. • SABS is not well capacitated to verify that all goods procured have 60% value add in RSA. 	<p>can comply with the proposed targets.</p> <p>Mining companies are provided three years transitional period to comply with the proposed targets.</p> <p>DMR is of the view that it will be difficult for procurement to be regarded as a priority element due to external dependencies which are outside the control of mining right holders.</p> <p>Multinational companies are benefiting from the mining industry and must therefore contribute to the sustainable development of the industry.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>of 100% of each company's mineral samples across the mining value chain.</p> <ul style="list-style-type: none"> • A mining right holder may not conduct sample analysis using foreign based facilities without the prior written consent of the minister. • Mining right holders to verify local contents of capital goods and consumables for SABS before submitting annual reports to the department. • Multinational suppliers to contribute a minimum of 1% of annual turnover generated from local mining companies towards socio economic development of local communities, capacity building for BEE suppliers of goods (capital and consumables) and services into a social development Trust fund established by the Minister for that purpose. 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> Trustees of Social Development Trust to include stakeholders from organized business, organized labour and business. 		
6. Housing and Living Conditions	<ul style="list-style-type: none"> This element requires mining companies to improve the standards of housing and living conditions for the minerals industry as follows: <ul style="list-style-type: none"> (a) Maintain the occupancy rate of one person per unit and maintain family units. (b) Contribute towards home ownership options for interested mining employees in consultation with organized labour The contribution for home ownership to include but not limited to the following: <ul style="list-style-type: none"> (a) Mining companies offering building packages to interested employees 	<ul style="list-style-type: none"> This element must not be ring-fenced as it will have phased out in three years. -Home ownership must not be prescriptive but must also include rental stock and preference of employees domicile. The requirement for home-ownership guarantees falls outside the mandate of the mining companies. 	<p>Housing and living conditions are important because they restore dignity and privacy of mine employees.</p> <p>It is envisaged that home ownership guarantees will be provided by the employer against the employees' pension fund.</p> <p>Different options are already proposed in the draft mining charter and those include, subsidies, guarantees, building package and rental stock will be considered.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(b) Subsidizing such workers to buy homes</p> <p>(c) Mining companies partnering with finance institutions to issue guarantees for home ownership on behalf of the mine employees</p> <p>(d) Mining companies must ensure that where a company is offering housing for its employees such housing must be integrated within communities in mining and labour sending areas in line with the department of Human settlement policies on sustainable integrated human settlement.</p>		
7. Sustainable development	<ul style="list-style-type: none"> This element was omitted in the mining charter published for public comment. 	<ul style="list-style-type: none"> Chamber asked why this element has been reinstated in the Charter because is not a transformation issue. 	Majority of stakeholders consulted complained about the removal of this element in the gazetted charter.
8. Employment Equity	Mining Charter 2016 requirements are:	<ul style="list-style-type: none"> The proposed targets will not yield any transformation 	It must be kept in mind that mining companies will not be

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> • Board: 50% black, 20% of which must be female. • Executive Management (Board) 50% black, 15% of which must be black females in line with employment active population. A minimum of 50% Black people proportional representative at the executive director's level as a percentage of all executive directors of which 25% must be black female in line with the active population. • Senior Management (EXCO) 60% black employees in Senior Management of which 30% is black females in line with the employment active population. • Middle Management level: 75% black employees in the Middle management as proportional representation percentage of all middle management of 	<p>results when we do a revisit after five years from implementation of the Charter.</p> <ul style="list-style-type: none"> • What is the rationale behind the use of national demographics instead of EAP. 2% of disability must include all employees. 	<p>starting from zero, however they will augment from the 2014 targets.</p> <p>According employment commission statistics, the mining industry already has 2% of white employees with disabilities, the mining charter proposals seeks to ensure that the statistics include black employees. However the concern has been noted and will be considered.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>which 38% must be black female's representative of employment active population.</p> <ul style="list-style-type: none"> • Junior Management level: A minimum of 88% black employees in junior management as a proportional representative percentage of all junior management of which 44% is black females in that category in line with the active population. • Core and Critical Skills: a minimum of 40% black people are represented in the mining company's core and critical skills by diversifying their existing pools. • Employees with disabilities: 2% of black employees with disabilities as a percentage of all employees. 		

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MINING CHARTER WORKSHOP

DATE: 18 OCTOBER 2016

VENUE: MANHATTAN HOTEL, PRETORIA

AGENDA: DISCUSS THE REVIEWED MINING CHARTER ELEMENTS

ATTENDEES: ATTENDANCE REGISTER ATTACHED

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
1.Ownership	<p>The ownership element requires the following:</p> <ul style="list-style-type: none">• Achievement of a minimum target of 26% ownership to enable meaningful economic participation of black people taking into account the provisions of section 37(2) of the Companies Act, 2008 (Act No. 71 of 2008);• The 26% stake shall be allocated in not less than a	Not discussed.	DMR is not in apposition to discuss ownership element due to pending court case and principal's engagements.

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>minimum of 5 % shares equitably distributed amongst the <u>black</u> workers, black entrepreneurs and the community respectively.</p> <ul style="list-style-type: none"> • The aforementioned minimum community participation and workers stake shall be held in a trust created by the community and the workers respectively and registered with the Master of the High Court with jurisdiction. • The Trust must be constituted in terms of the Trusts Property Control Act 57 of 1998 as amended and report to the South African Revenue Services and the Department of Mineral Resources. 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> • A community and workers Trust must include representations from the traditional authorities and the Union respectively • Shareholders of the black people empowerment stake must create Special Purpose Vehicle (SPV) to manage the 26% black economic empowerment stake. • Each transaction must register an SPV • There must be a BBBEE transaction for each mining right granted and one SPV for each empowerment transaction. • The mining right holders must with the concurrence of the 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>BEE partners consolidate the empowerment transactions with the prior written consent of the minister.</p> <ul style="list-style-type: none"> • The aforementioned SPV must register its own Memorandum of Incorporation (MOI) to regulate the black economic participation stake in equal shares amongst the black workers, black entrepreneurs and the community consistent with the Companies Act. • The MOI for the SPV must address the following issues; <ul style="list-style-type: none"> (ix) appointment of joint representative; (x) allocation of voting rights in respect of both the 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>special and ordinary resolutions;</p> <p>(xi) dispute resolution mechanism; and</p> <p>(xii) any other matter prescribed by the Companies Act.</p> <ul style="list-style-type: none"> The only offsetting under the ownership element is against the value of beneficiation as provided for by section 26 of the MPRDA and elaborated in the mineral beneficiation framework. 		
2. Beneficiation	<ul style="list-style-type: none"> Mining Charter provides for a mechanism for companies to offset up to 11 percentage of the 26% of the ownership reserved for black people. 	Not discussed.	Both parties agreed not to discuss this element as it is linked to the ownership element.

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
3. Human Resource Development (HRD)	<ul style="list-style-type: none"> • Mining Industry must invest 5% of annual payroll essential skills development activities such as artisanal , bursaries, literacy and numeracy and reflective of proportional representation, but mandatory skills levy; • The 5% annual payroll for skills development shall include support for South African based academic institution, research and development initiative intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation. 	<ul style="list-style-type: none"> • Chamber view was that a percentage should be spent on employees at lower ranks and universities. • The wording on this element is not clear and need to be reworked with regards to the proposed 5%. • Proposed that HRD to be considered as priority element. • It raised its opposition towards to the proposal that 15% of the 5% annual payroll be contributed towards ministerial skills development fund. 	<p>The department welcomes the proposal and will be considered just like any other mining industry stakeholder, where necessary will be considered to adjust the proposed document.</p> <p>The 15% contribution towards the Ministerial skills development trust fund is meant to enhance skills development in the mining industry and as such it will be maintained.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> Invest 15% of the above mentioned 5% payroll levy to the Ministerial Skills Development Trust Fund. A mining company may make representations to the Minister for exemption from aspects of this requirement in the event of having partnered and supported State owned entity (e.g. Mintek) in respect of research and development. The trustees of the Ministerial Skills Development Trust Fund shall include stakeholders from organised business, organised labour and Government. 		
4. Mine Community Development	<ul style="list-style-type: none"> The Gazetted Charter requires mining right holders to annually contribute 1% of 	<ul style="list-style-type: none"> It proposed that a maximum of 2% Net Profit After Tax be contributed 	The mining industry already claimed to have achieved contribution which exceeded the

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	turnover towards mine community development.	<p>towards Socio-Economic development</p> <ul style="list-style-type: none"> It also proposed that a direct linkage between Mine Community Development contributions and SLP's. 	<p>target that was equivalent to the proposed 1% contribution, the use of annual turnover is also intended to avoid manipulation by mining companies.</p> <p>The proposed targets for mine community development are mandatory and form part of the social license to operate.</p> <p>DMR view is that non-monetary contribution is discretionary and will be difficult to implement and measure and as such must be regarded as corporate social investment.</p>
5. Procurement	<ul style="list-style-type: none"> The element proposed that "a mining right holder must ensure 	<ul style="list-style-type: none"> Proposed that Capital & Consumables must be combined and referred to as Goods. 	The onus to verify local content lies with the suppliers.

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>that procurement policies and actual procurement aligns with:</p> <p>Capital goods:</p> <ul style="list-style-type: none"> -To procure a minimum of 60% locally manufactured capital goods from BEE compliant manufacturing companies, 30% of the 60% must preferably be given to small business development which are BEE compliant and a minimum of 10% of the 30% must be reserved for the BEEE compliant enterprise development. <p>Consumables:</p> <ul style="list-style-type: none"> A mining right holder to procure a minimum of 70% of locally manufactured consumables 	<ul style="list-style-type: none"> Guidelines on procedure to engage SABS by the Mines, to avoid inconsistency. Local goods will remain a challenge, the biggest mines spent is on machinery and most of them are not manufactured locally. Services will not be a challenge. The targets of local manufactured goods should consider the country's readiness, it should be thought carefully. DMR must set realistic targets on the Charter. Can DMR share the SEIAS with the Chamber, Procurement to be a priority element. 	<p>DMR agreed to consider the collapsing of capital and consumables being referred as goods.</p> <p>DMR has conducted a SEIAS and will be published and everyone will have access to it.</p> <p>Government will look at SABS capacity and where necessary improve the capacity.</p> <p>DMR is working with DTI to ensure that mining companies can comply with the proposed targets.</p> <p>Mining companies are provided three years transitional period to comply with the proposed targets.</p>

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>form BEE compliant manufacturing companies.</p> <ul style="list-style-type: none"> • 30% of the above 70% must be given to small business development which are BEE compliant and a minimum of 10% of the 30% must be reserved for BEE compliant enterprise development. <p>Services:</p> <ul style="list-style-type: none"> • A mining right holder must procure a minimum of 80% of services from BEE compliant and locally based companies. • A minimum of 40% of the above 80% must be reserved for BEE compliant, a minimum of 10% of 40% must be reserved for BEE compliant. 	<ul style="list-style-type: none"> • Multinational companies are taxed twice because of the DTI Codes and the mining charter. • SABS is not well capacitated to verify that all goods procured have 60% value add in RSA. 	<p>DMR is of the view that it will be difficult for procurement to be regarded as a priority element due to external dependencies which are outside the control of mining right holders.</p> <p>Multinational companies are benefiting from the mining industry and must therefore contribute to the sustainable development of the industry.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> • Mining right holders must utilize the South African based facilities for analysis of 100% of each company's mineral samples across the mining value chain. • A mining right holder may not conduct sample analysis using foreign based facilities without the prior written consent of the minister. • Mining right holders to verify local contents of capital goods and consumables for SABS before submitting annual reports to the department. • Multinational suppliers to contribute a minimum of 1% of annual turnover generated from local mining companies 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>towards socio economic development of local communities, capacity building for BEE suppliers of goods (capital and consumables) and services into a social development Trust fund established by the Minister for that purpose.</p> <ul style="list-style-type: none"> • Trustees of Social Development Trust to include stakeholders from organized business, organized labour and business. 		
6. Housing and Living Conditions	<ul style="list-style-type: none"> • This element requires mining companies to improve the standards of housing and living conditions for the minerals industry as follows: 	Concern over the retention of this element and it being ring fenced.	DMR will removed issues relating to the housing and living conditions as such issues are dealt with under the Housing and Living Condition standards.

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> • Maintain the occupancy rate of one person per unit and maintain family units. • Contribute towards home ownership options for interested mining employees in consultation with organized labour • The contribution for home ownership to include but not limited to the following: <ul style="list-style-type: none"> (e) Mining companies offering building packages to interested employees (f) Subsidizing such workers to buy homes (g) Mining companies partnering with finance institutions to issue guarantees for home 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>ownership on behalf of the mine employees</p> <p>(h) Mining companies must ensure that where a company is offering housing for its employees such housing must be integrated within communities in mining and labour sending areas in line with the department of Human settlement policies on sustainable integrated human settlement.</p>		
7. Sustainable development	<p>Research and Development Spend</p> <ul style="list-style-type: none"> A right holder annually contribute 1.5% annual turnover towards Research and Development in South Africa. 	<ul style="list-style-type: none"> Chamber asked why this element has been reinstated in the Charter because is not a transformation issue. Chamber is opposed to the 1.5% annual turnover to be contributed towards R&D. 	<p>Majority of stakeholders consulted complained about the removal of this element in the gazetted charter.</p> <p>DMR will consider revising the contribution towards R&D.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> • 50% of the 70% indicated above must be spent on South African Historically Disadvantaged Black Academic Institutions including existing institutions. <p>Environmental Management and health and safety</p> <ul style="list-style-type: none"> • The right holder will be required to comply with the approved EMP. • On health and safety a right holder will be required to implement the 2016 Occupational Health and Safety Summit Milestones. 		
8. Employment Equity	<p>Mining Charter 2016 requirements are:</p> <ul style="list-style-type: none"> • Board: 50% black, 25% of which must be female. 	<ul style="list-style-type: none"> • The proposed targets will not yield any transformation results when we do a revisit after five years from implementation of the Charter. 	<p>It must be kept in mind that mining companies will not be starting from zero, however they will augment from the 2014 targets.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> • Executive Management (Board) 50% black, 25% of which must be black females in line with employment active population. A minimum of 50% Black people, 25% must be black female in line with the active population. • Senior Management (EXCO) 60% black employees in Senior Management of which 30% is black females in line with the employment active population. • Middle Management level: 75% black employees in the Middle management as proportional representation percentage of all middle management of which 38% 	<ul style="list-style-type: none"> • What is the rationale behind the use of national demographics instead of EAP. • 2% of disability must include all employees. • Change of the designated group from HDSA to black, as it excludes white women who make up 15% of EE contribution. 	<p>According employment commission statistics, the mining industry already has 2% of white employees with disabilities, the mining charter proposals seeks to ensure that the statistics include black employees. However the concern is noted and will be considered.</p> <p>The concern about the demographics are noted and will be considered consistent with the Solidary judgement on the use of quotas.</p> <p>The change in the definition was to align with the BBBEA and address the mischief of the industry of preferring white women over and above other designated groups.</p>

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>must be black female's representative of employment active population.</p> <ul style="list-style-type: none"> • Junior Management level: A minimum of 88% black employees in junior management as a proportional representative percentage of all junior management of which 44% is black females in that category in line with the active population. <p>Core and Critical Skills: a minimum of 40% black people are represented in the mining company's core and critical skills by diversifying their existing pools.</p> <ul style="list-style-type: none"> • Employees with disabilities: 2% of black employees with 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	disabilities as a percentage of all employees		

MINING CHARTER WORKSHOP

DATE: 18 & 19 JANUARY 2017

M.S.7 MK

VENUE: DMR BOARDROOM

AGENDA: DISCUSS THE REVIEWED MINING CHARTER ELEMENTS

ATTENDEES: ATTENDANCE REGISTER ATTACHED

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
1. Ownership.	<ul style="list-style-type: none">• The revised ownership element requires the following: NEW MINING RIGHTS (a) A new mining right must have a minimum target of 29% black person's ownership per mining right or in the mining company which holds the mining right/s in the following manner: (i) The BEE partners shall include workers in the form of ESOPS (or any other structure) and BEE entrepreneurs. (ii) The 29% stake must be acquired in not less than a minimum of 10% economic	Not discussed.	DMR is not in apposition to discuss ownership element due to pending court case and principal's engagements.

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>interest plus corresponding percentage of voting rights to each BEE partner.</p> <p>(iii) The 29% BEE shareholding shall be held in an entity/ies which is/are separate from the mining right holder.</p> <p>(b) Where a BEE partner wishes to exit, BEE shareholding shall not be diluted to below 18%.</p> <p>(c) Full empowerment credentials shall be recognised for a period of three years from the date of exit, provided that:</p> <p>(i) A BEE partner held the empowerment shares for a minimum period of three years;</p> <p>(ii) Net value based on time graduation factor was realised;</p> <p>and</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(iii) A holder's BEE shareholding must be at 29% at the time a BEE partner wishes to exit.</p> <p>(d) Where a BEE partner has exited in line with paragraphs (b) and (c), the empowerment shall be recognised for a period of three years after which a mining right holder must re-empower up to a minimum of 29%.</p> <p>EXISTING MINING RIGHTS</p> <p>(a) A historical transaction concluded prior to the coming into operation of the reviewed Mining Charter 2016 that achieved the minimum 26% or more empowerment target by 30th June 2016 shall be recognised for the duration of the mining right.</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(b) This shall apply to an existing right holder whose:</p> <p>(i) partner/s have exited, BEE contract lapsed or the previous BEE partner transferred shares to a non-BEE company;</p> <p>(ii) BEE agreement contains a BEE exit clause which is applicable after the coming into operation of the Mining Charter 2016.</p> <p>(c) A right holder who claims the recognition of previous deals shall be deemed to have achieved a minimum of 26% BEE target irrespective of actual BEE shareholding and therefore required to top up its empowerment target to 29% BEE.</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(d) An existing mining right holder who after the coming into operation of the Mining Charter 2016 has maintained a minimum of 26% BEE shareholding shall be required to top up BEE empowerment to 29%.</p> <p>(e) An existing mining right holder who has acquired and maintained more than 29% BEE shareholding shall not be required to top up its BEE.</p> <p>(f) The recognition of previous deals shall include historical deals concluded on units of production, share asset deals including deals where the BEE partners have sold their shareholding and all historical BEE deals which formed</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>the basis upon which new order mining rights were granted.</p> <p>(g) The BEE deal referred to above may be at company level, asset level or cover all operations.</p> <p>(h) The recognition of previous deals shall not apply to transactions which did not achieve a minimum of 26% empowerment target by 30th June 2016.</p> <p>(i) Section 11 applications affected by the recognition of previous deals will be processed with the recognition.</p> <p>(j) Where the mining right holder who have received recognition of a previous deal applies for a new mining right or prospecting right, such mining</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>right or prospecting right must have a minimum of 29% BEE shareholding.</p> <p>(k) The recognition of previous deals shall not be recognised on application for renewal of a right/rights on which a deal was previously recognised.</p>		
2. Beneficiation	<ul style="list-style-type: none"> • Mining Charter provides for a mechanism for companies to offset up to 11 percentage of the 26% of the ownership reserved for black people. 	Not discussed.	Not discussed as it is linked to ownership.
3. Human Resource Development (HRD)	<ul style="list-style-type: none"> • Mining Industry must invest 5% of annual payroll essential skills development activities such as artisanal , bursaries, literacy and numeracy and reflective of 	<ul style="list-style-type: none"> • Chamber concern of the lack of clarity as to the MTDA's objectives and governance, object to perception of their members funding the bureaucracy. 	<p>DMR agrees to change from 5% of payroll to 5% of the leviable amount consistent with schedule 4 of the Income Tax Act.</p> <p>MTDA will be established in line with the relevant prescripts and</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>proportional representation, but mandatory skills levy;</p> <ul style="list-style-type: none"> • The 5% annual payroll for skills development shall include support for South African based academic institution, research and development initiative intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation. • Invest 15% of the above mentioned 5% payroll levy to the Mining Transformation and Development Agency. 	<ul style="list-style-type: none"> • The use of payroll must be changed to leviable amount. • Establishment of the MTDA (Chamber). • Allocation of 15% of the agreed 5% payroll to MTDA, loss of direct control over training expenditure. Chamber commitment to consult members on voluntary contribution of the sector to MTDA. • Chamber proposal for recognition of MHS training expenditure. 	<p>regulatory instruments in consultation with National Treasury.</p> <p>MHS training is mandatory in terms of the MHSA and therefore cannot be part of the skills development.</p> <p>The 15% allocation to MTDA will be used to enhance skills development in the mining industry.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
4. Mine Community Development	<ul style="list-style-type: none"> The Gazetted Charter requires mining right holders to annually contribute 1% of turnover towards mine community development. 	<ul style="list-style-type: none"> The Chamber's main concern was the use of revenue vs net profit after tax (NPAT). Proposed 2% NPAT or EBITDA. 	<p>The mining industry already claimed to have achieved contribution which exceeded the target that was equivalent to the proposed 1% contribution the use of annual turnover is intended to avoid manipulation by mining industry.</p> <p>The proposed targets for mine community development are mandatory and form part of the social license to operate.</p> <p>The use of NPAT and EBITDA is rejected.</p>
5. Procurement	<ul style="list-style-type: none"> The element proposed that "a mining right holder must ensure that procurement policies and actual procurement aligns with: 	<ul style="list-style-type: none"> Concern around capacity of local industry to meet demand competitively. 	<p>The proposed targets will be maintained and DMR will consider extending transitional period from 3 years to 5 years for compliance.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>Mining Goods:</p> <ul style="list-style-type: none"> A mining right holder must spend a minimum of 70% of total mining goods procurement spend on South African manufactured goods. The abovementioned 70% of the total goods procurement spend shall be apportioned in the following manner: <p>(a) A minimum of 21 percentage points of total mining goods procurement spend must be set aside for sourcing South African manufactured goods from 50%+1 vote black owned and controlled companies;</p> <p>(b) A minimum of 5 percentage points of total</p>	<ul style="list-style-type: none"> Chamber is also of the view that the proposed targets for mining goods are not achievable. 	<p>The Charter has been revised to define local content as 60% value add.</p> <p>The Charter has been revised to explicitly set out the annual targets, unpack "progressive".</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>mining goods procurement spend must be set aside for sourcing South African manufactured goods from companies with a minimum of 50%+1 vote black women owned and controlled and/or 50% +1 vote youth ownership; and</p> <p>(c) A minimum of 44 percentage points of total mining goods procurement spend of the target must be procured from companies that are at least at level 4 BEE + 26% ownership.</p> <p>Services</p> <ul style="list-style-type: none"> • A minimum of 80% of the total spend on services must be sourced from South African based companies. The abovementioned 80% of the 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>total services procurement spend shall be apportioned in the following manner:</p> <p>(a) A minimum of 65 percentage points of the total spend on services must be sourced from 50% plus 1 vote black owned and controlled companies;</p> <p>(b) A minimum of 10 percentage points of the total spend on services must be sourced from companies with a minimum of 50%+1 vote black women owned and controlled companies; and</p> <p>(c) A minimum of 5 percentage points of the total spend on services must be sourced from companies with a minimum of</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>50%+1 vote youth owned and controlled companies.</p> <p>Processing of samples</p> <p>(a) A mining right holder must utilise South African based facilities for the analysis of 100% of all mineral samples across the mining value chain except in cases where samples are analysed for the purpose of verification of the accuracy of local laboratories.</p> <p>(b) A mining right holder may not conduct sample analyses using foreign based facilities without the prior written consent of the Minister.</p> <p>Verification of local content</p> <p>(a) A mining right holder shall when submitting the annual</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>Mining Charter report to the Department provide proof of local content for goods and services in the form of certification from the South African Bureau of Standards (SABS).</p> <p>(b) The responsibility to verify local content lies with the supplier of goods and or services.</p> <p>Contribution by Foreign Suppliers</p> <p>A foreign supplier must contribute a minimum of 1% of its annual turnover generated from local mining company/ies towards the Mining Transformation and Development Agency.</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
6. Housing and Living Conditions	<ul style="list-style-type: none"> • Element removed and issues to be dealt with under the Housing and Living Condition standards. 	<ul style="list-style-type: none"> • The chamber welcomes the proposal. 	Element removed and issues to be dealt with under the Housing and Living Condition standards.
7. Sustainable development	<p>Research and Development Spend</p> <ul style="list-style-type: none"> • Where a right holder intends to undertake Research and Development, the right holder must spend at least 70% of their Research and Development budget in South Africa. • (50% of the 70% indicated above must be spent on South African Historically Disadvantaged Black Academic Institutions including existing institutions. 	<ul style="list-style-type: none"> • Does not support the reinsertion of this element. • Chamber is comfortable with the proposed provision on R&D, however concerned about capacity of Black Academic Institution. 	<p>Mechanisms to be developed to address capacity gaps within the transition period.</p> <p>The sustainable development element will be maintained.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>Environmental Management and health and safety.</p> <p>The right holder will be required to comply with the approved EMP.</p> <ul style="list-style-type: none"> On health and safety a right holder will be required to implement the 2016 Occupational Health and Safety Summit Milestones. 		
8. Employment Equity	<p>Mining Charter 2016 requirements are:</p> <ul style="list-style-type: none"> Board: 50% black, 25% of which must be female. Executive Management (Board) 50% black, 25% of which must be black females. A minimum of 50% Black people proportional representative at the executive director's level as a 	<ul style="list-style-type: none"> Chamber expressed concern over the feasibility of the targets established due to the change of focus from "HDSA" to "black" which excludes white women. Recommended the reduction of targets. 	<p>Three Year transitional period will be maintained and targets developed progressively over the same period.</p> <p>The concern about the demographics are noted and will be considered consistent with the Solidary judgement on the use of quotas.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>percentage of all executive directors of which 25% must be black females.</p> <ul style="list-style-type: none"> • Senior Management (EXCO) 60% black employees in Senior Management of which 30% is black females. • Middle Management level: 75% black employees in the Middle management as proportional representation percentage of all middle management of which 38% must be black females. • Junior Management level: A minimum of 88% black employees in junior management as a proportional representative percentage of 		<p>The change in the definition was to align with the BBBEA and address the mischief of the industry of preferring white women over and above other designated groups.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>all junior management of which 44% is black females.</p> <p>Core and Critical Skills: a minimum of 40% black people are represented in the mining company's core and critical skills by diversifying their existing pools.</p> <ul style="list-style-type: none"> • Employees with disabilities: 2% of black employees with disabilities as a percentage of all employees 		
9. Independent verification	<ul style="list-style-type: none"> • Reporting, Monitoring and evaluation 	<ul style="list-style-type: none"> • Chamber proposed that the verification must be conducted by independent service provider. 	Not supported by the DMR, the DMR as the Regulator will conduct periodic reviews and consult with stakeholders.
10. Compliance and scorecard	<ul style="list-style-type: none"> • Ring fenced elements vs priority element. 	<ul style="list-style-type: none"> • Chamber propose that the Charter must make provision for "sub-minimums". 	Not supported. The three ring-fenced elements will be maintained and introduction of sub-minimums will encourage the

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
			industry to do bare minimum and as result water down the targets.

MINING CHARTER WORKSHOP

DATE: 20 JANUARY 2017

VENUE: DMR BOARDROOM

AGENDA: DISCUSS THE REVIEWED MINING CHARTER ELEMENTS

ATTENDEES: ATTENDANCE REGISTER ATTACHED

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
1. Ownership.	<p>The revised ownership element requires the following:</p> <p>NEW MINING RIGHTS</p> <p>(a) A new mining right must have a minimum target of 29% black</p>	<ul style="list-style-type: none"> • A signed settlement agreement is essential in addition to the DMR including the key components of the agreement in the Reviewed Mining Charter. 	The department is of the view that it is untenable to sign a settlement agreement with one party or stakeholder on a matter that impacts multiple

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>person's ownership per mining right or in the mining company which holds the mining right/s in the following manner:</p> <p>(i) The BEE partners shall include workers in the form of ESOPS (or any other structure) and BEE entrepreneurs.</p> <p>(ii) The 29% stake must be acquired in not less than a minimum of 10% economic interest plus corresponding percentage of voting rights to each BEE partner.</p> <p>(iii) The 29% BEE shareholding shall be held in an entity/ies which is/are separate from the mining right holder.</p> <p>(b) Where a BEE partner wishes to exit, BEE shareholding shall not be diluted to below 18%.</p>	<ul style="list-style-type: none"> - Shall not be required to top up BEE shareholding by 3% (to 29% BEE). - The recognition of continuing consequences must apply to renewal of rights. <p>The Chamber agreed on the basis that full continuing consequences would apply to existing and new rights for the duration of the rights.</p> <p>A mining right holder who claims the recognition of previous deals in excess of 29% BEE but has not maintained such BEE shareholding:</p>	<p>stakeholders, but the essence of the agreement will be included in the Reviewed Mining Charter.</p> <p>-The department does not agree with Chamber's view.</p> <p>The recognition of previous deals shall not be recognised for application of renewals of rights.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(c) Full empowerment credentials shall be recognised for a period of three years from the date of exit, provided that:</p> <p>(i) A BEE partner held the empowerment shares for a minimum period of three years;</p> <p>(ii) Net value based on time graduation factor was realised; and</p> <p>(iii) A holder's BEE shareholding must be at 29% at the time a BEE partner wishes to exit.</p> <p>(d) Where a BEE partner has exited in line with paragraphs (b) and (c), the empowerment shall be recognised for a period of three years after which a mining right holder must re-empower up to a minimum of 29%.</p> <p>EXISTING MINING RIGHTS</p>	<p>Shall not be required to top up BEE shareholding by 3% (to 29% BEE).</p> <p>The recognition of previous deals shall not be recognised on application for renewal of a right/rights on which a deal was previously recognised (DMR position).</p> <p>Section 11 applications affected by the recognition of previous deals will be processed with the recognition.</p>	

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(a) A historical transaction concluded prior to the coming into operation of the reviewed Mining Charter 2016 that achieved the minimum 26% or more empowerment target by 30th June 2016 shall be recognised for the duration of the mining right.</p> <p>(b) This shall apply to an existing right holder whose:</p> <p>(i) partner/s have exited, BEE contract lapsed or the previous BEE partner transferred shares to a non-BEE company;</p> <p>(ii) BEE agreement contains a BEE exit clause which is applicable after the coming into operation of the Mining Charter 2016.</p> <p>(c) A right holder who claims the recognition of previous deals shall</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>be deemed to have achieved a minimum of 26% BEE target irrespective of actual BEE shareholding and therefore required to top up its empowerment target to 29% BEE.</p> <p>(d) An existing mining right holder who after the coming into operation of the Mining Charter 2016 has maintained a minimum of 26% BEE shareholding shall be required to top up BEE empowerment to 29%.</p> <p>(e) An existing mining right holder who has acquired and maintained more than 29% BEE shareholding shall not be required to top up its BEE.</p> <p>(f) The recognition of previous deals shall include historical deals</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>concluded on units of production, share asset deals including deals where the BEE partners have sold their shareholding and all historical BEE deals which formed the basis upon which new order mining rights were granted.</p> <p>(g) The BEE deal referred to above may be at company level, asset level or cover all operations.</p> <p>(h) The recognition of previous deals shall not apply to transactions which did not achieve a minimum of 26% empowerment target by 30th June 2016.</p> <p>(i) Section 11 applications affected by the recognition of previous deals will be processed with the recognition.</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(j) Where the mining right holder who have received recognition of a previous deal applies for a new mining right or prospecting right, such mining right or prospecting right must have a minimum of 29% BEE shareholding.</p> <p>(k) The recognition of previous deals shall not be recognised on application for renewal of a right/rights on which a deal was previously recognised.</p>		
9. Human Resource Development (HRD)	<ul style="list-style-type: none"> • Mining Industry must invest 5% of annual payroll essential skills development activities such as artisanal , bursaries, literacy and numeracy and reflective of proportional representation, but mandatory skills levy; 	<ul style="list-style-type: none"> • There is a need to discuss further the MTDA. • Instead of creating a new agency the Charter should rather prescribe details on how skills development contribution should be spent. 	The department welcomes the proposal to discuss MTDA further.

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> The 5% annual leviable amount for skills development shall include support for South African based academic institution, research and development initiative intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation. Invest 15% of the above mentioned 5% leviable levy to the Mining Transformation Development Agency. 		
10. Mine Community Development	<ul style="list-style-type: none"> The Gazetted Charter requires mining right holders to annually contribute 1% of turnover 	<ul style="list-style-type: none"> It proposed that a maximum of 2% Net Profit After Tax be contributed towards Socio-Economic development. 	The mining industry already claimed to have achieved contribution which exceeded the target that was equivalent

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	towards mine community development.	<ul style="list-style-type: none"> Chamber and DMR to engage further on the proposed targets. 	<p>to the proposed 1% contribution the use of annual turnover is intended to avoid manipulation by mining industry.</p> <p>The proposed targets for mine community development are mandatory and form part of the social license to operate.</p>
11. Procurement	<p>Mining Goods</p> <ul style="list-style-type: none"> A mining right holder must spend a minimum of 70% of total mining goods procurement spend on South African manufactured goods. The abovementioned 70% of the total goods procurement spend shall be apportioned in the following manner: A minimum of 21 percentage points of total mining goods 	<ul style="list-style-type: none"> Chamber agrees with proposed targets however Chamber and DMR must engage further on measures and transitional period. 	DMR welcomes the proposal to engage further and increase the transitional period.

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>procurement spend must be set aside for sourcing South African manufactured goods from 50%+1 vote Black owned and controlled companies;</p> <ul style="list-style-type: none"> • A minimum of 5 percentage points of total mining goods procurement spend must be set aside for sourcing South African manufactured goods from companies with a minimum of 50%+1 vote Black women owned and controlled and/or 50% +1 vote youth ownership; and • A minimum of 44 percentage points of total mining goods procurement spend of the target must be procured from companies that are at least at level 4 BEE + 26% ownership. 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>Services</p> <ul style="list-style-type: none"> A minimum of 80% of the total spend on services must be sourced from South African based companies. The abovementioned 80% of the total services procurement spend shall be apportioned in the following manner: <p>(a) A minimum of 65 percentage points of the total spend on services must be sourced from 50% plus 1 vote Black owned and controlled companies;</p> <p>(b) A minimum of 10 percentage points of the total spend on services must be sourced from companies with a minimum of 50%+1 vote Black women owned and controlled companies; and</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(c) A minimum of 5 percentage points of the total spend on services must be sourced from companies with a minimum of 50%+1 vote youth owned and controlled companies.</p> <p>Processing of samples</p> <ul style="list-style-type: none"> • A mining right holder must utilise South African based facilities for the analysis of 100% of all mineral samples across the mining value chain except in cases where samples are analysed for the purpose of verification of the accuracy of local laboratories. • A mining right holder may not conduct sample analyses using foreign based facilities without the prior written consent of the Minister. 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>Verification of local content</p> <ul style="list-style-type: none"> • A mining right holder shall when submitting the annual Mining Charter report to the Department provide proof of local content for goods and services in the form of certification from the South African Bureau of Standards (SABS). • The responsibility to verify local content lies with the supplier of goods and or services. <p>Contribution by Foreign Suppliers</p> <ul style="list-style-type: none"> • A foreign supplier must contribute a minimum of 1% of its annual turnover generated from local mining company/ies towards the Mining Transformation and Development Agency. 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
Housing and Living Conditions	<ul style="list-style-type: none"> • Element removed and issues to be dealt with under the Housing and Living Condition standards. 	<ul style="list-style-type: none"> • The chamber welcomes the proposal. 	Element removed and issues to be dealt with under the Housing and Living Condition standards.
(d) Sustainable development	<p>Research and Development Spend</p> <ul style="list-style-type: none"> • Where a right holder intends to undertake Research and Development, the right holder must spend at least 70% of their Research and Development budget in South Africa. • 50% of the 70% indicated above must be spent on South African Historically Disadvantaged Black Academic Institutions including existing institutions. <p>Environmental Management and health and safety.</p>	<ul style="list-style-type: none"> • Chamber not opposed to the revised element however there is a need to build in an element of sustainability of the industry. 	DMR welcomes the proposals.

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>The right holder will be required to comply with the approved EMP.</p> <ul style="list-style-type: none"> On health and safety a right holder will be required to implement the 2016 Occupational Health and Safety Summit Milestones. 		
(e) Employment Equity	<p>Mining Charter 2016 requirements are:</p> <ul style="list-style-type: none"> Board: 50% black, 25% of which must be female. Executive Management (Board) 50% black, 25% of which must be black females. A minimum of 50% Black people proportional representative at the executive director's level as a percentage of all executive directors of which 25% must be black females. 	<ul style="list-style-type: none"> Chamber proposes that the mining charter must submit five year plans with annual progression targets. 	The department does not agree to the proposed targets.

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> • Senior Management (EXCO) 60% black employees in Senior Management of which 30% is black females. • Middle Management level: 75% black employees in the Middle management as proportional representation percentage of all middle management of which 38% must be black females. • Junior Management level: A minimum of 88% black employees in junior management as a proportional representative percentage of all junior management of which 44% is black females. • Core and Critical Skills: a minimum of 40% black people are represented in the mining 		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>company's core and critical skills by diversifying their existing pools.</p> <ul style="list-style-type: none"> • Employees with disabilities: 2% of black employees with disabilities as a percentage of all employees. 		
(f) Applicability	<ul style="list-style-type: none"> • The Charter provides for 3 ring-fenced elements (Mine community development, HRD and Ownership) and mining right holders are required to maintain 100 percent compliance with these targets at all times for the duration of a mining right. 	<ul style="list-style-type: none"> • Chamber views is that if they agree on measures on the issues of contention of ring fenced elements then 100% compliance is automatic. 	<ul style="list-style-type: none"> • 100% compliance is justifiable if agreement is reached on each of the 3 priority elements.

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MINING CHARTER WORKSHOP: DMR AND CHAMBER OF MINES

DATE: 23 JANUARY 2017

VENUE: DIEP IN DIE BERG

AGENDA: DISCUSS THE REVIEWED MINING CHARTER ELEMENTS

ATTENDEES: ATTENDANCE REGISTER ATTACHED

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
1.Ownership	<p>The revised ownership element requires the following:</p> <p>NEW MINING RIGHTS</p> <p>(a) A new mining right must have a minimum target of 29% black person's ownership per mining right or in the mining company which holds the mining right/s in the following manner:</p> <p>(i) The BEE partners shall include workers in the form of ESOPS (or any other structure) and BEE entrepreneurs.</p> <p>(ii) The 29% stake must be acquired in not less than a minimum of 10% economic interest plus corresponding percentage of voting rights to each BEE partner.</p> <p>(iii) The 29% BEE shareholding shall be held in an entity/ies which is/are separate from the mining right holder.</p>	<ul style="list-style-type: none"> • A signed settlement agreement is essential in addition to the DMR including the key components of the agreement in the Reviewed Mining Charter. • Shall not be required to top up BEE shareholding by 3% (to 29% BEE). • The recognition of continuing consequences must apply to renewal of rights. • The Chamber agreed on the basis that full continuing consequences would apply to existing and new rights for the duration of the rights. • A mining right holder who claims the recognition of previous deals in excess of 	<p>The department is of the view that it is untenable to sign a settlement agreement with one party or stakeholder on a matter that impacts multiple stakeholders, but the essence of the agreement will be included in the Reviewed Mining Charter.</p> <p>The recognition of previous deals shall not be recognised on application for renewal of a right/rights on which a deal was previously recognised.</p> <p>The department does not agree with Chamber's view.</p>

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(b) Where a BEE partner wishes to exit, BEE shareholding shall not be diluted to below 18%.

(c) Full empowerment credentials shall be recognised for a period of three years from the date of exit, provided that:

(i) A BEE partner held the empowerment shares for a minimum period of three years;

(ii) Net value based on time graduation factor was realised; and

(iii) A holder's BEE shareholding must be at 29% at the time a BEE partner wishes to exit.

(d) Where a BEE partner has exited in line with paragraphs (b) and (c), the empowerment shall be recognised for a period of three years after which a mining right holder must re-empower up to a minimum of 29%.

EXISTING MINING RIGHTS

(a) A historical transaction concluded prior to the coming into operation of the reviewed Mining Charter 2016 that achieved the minimum 26% or more empowerment target by

29% BEE but has not maintained such BEE shareholding:

- Shall not be required to top up BEE shareholding by 3% (to 29% BEE).
- Section 11 applications affected by the recognition of previous deals will be processed with the recognition.

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30th June 2016 shall be recognised for the duration of the mining right.

(b) This shall apply to an existing right holder whose:

(i) partner/s have exited, BEE contract lapsed or the previous BEE partner transferred shares to a non-BEE company;

(ii) BEE agreement contains a BEE exit clause which is applicable after the coming into operation of the Mining Charter 2016.

(c) A right holder who claims the recognition of previous deals shall be deemed to have achieved a minimum of 26% BEE target irrespective of actual BEE shareholding and therefore required to top up its empowerment target to 29% BEE.

(d) An existing mining right holder who after the coming into operation of the Mining Charter 2016 has maintained a minimum of 26% BEE shareholding shall be required to top up BEE empowerment to 29%.

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(e) An existing mining right holder who has acquired and maintained more than 29% BEE shareholding shall not be required to top up its BEE.

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

(g) The BEE deal referred to above may be at company level, asset level or cover all operations.

(h) The recognition of previous deals shall not apply to transactions which did not achieve a minimum of 26% empowerment target by 30th June 2016.

(i) Section 11 applications affected by the recognition of previous deals will be processed with the recognition.

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(j) Where the mining right holder who have received recognition of a previous deal applies for a new mining right or prospecting right, such mining right or prospecting right must have a minimum of 29% BEE shareholding.

(k) The recognition of previous deals shall not be recognised on application for renewal of a right/rights on which a deal was previously recognised.

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MINING CHARTER WORKSHOP: DMR AND CHAMBER OF MINES

DATE: 15 FEBRUARY 2017

VENUE: DMR BOARDROOM

AGENDA: DISCUSS THE REVIEWED MINING CHARTER ELEMENTS

ATTENDEES: ATTENDANCE REGISTER ATTACHED

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>OWNERSHIP</p> <p>NEW MINING RIGHTS</p> <p>A new mining right must have a minimum of 29% BEE shareholding for the duration of a mining right.</p> <ul style="list-style-type: none">• A right holder is allowed to dilute the 29% minimum shareholding down to 18%.• A dilution below 18% amounts to non-compliance and the provisions of the Act regarding non-compliance will be applied.	<ul style="list-style-type: none">• Chamber is concerned of unclear mechanisms of realising the net value.• Dilution below 18% must be allowed and re-empowerment must be back to 18% not 29%.• The signing of the settlement agreement and letters recognising previous deals is significant to Chamber members.	<p>DMR agrees to 29% black people shareholding</p> <p>Clarity on the mechanism to realise net value will be provided.</p> <p>The DMR maintains that dilution must be limited to not below 18% and a right holder must re-empower back to 29% in a period of three years.</p> <p>DMR's concern is that the unintended consequences of</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> In the event of a dilution down to 18%, the consequences of previous deals will be recognised to the extent that net value is realised in the hands of BEE partners taking into account the time graduation factor for a period of three years. In this regard a right holder is afforded 3 years transitional period to re-empower back to 29%. <p>PREVIOUS DEALS</p> <ul style="list-style-type: none"> Historical and Existing mining rights. All historical and existing transaction/s in respect of a mining right granted that achieved the minimum 26% BEE shareholding will be recognised for the duration of a mining right. A holder of such a mining right will be afforded a 3 years 	<ul style="list-style-type: none"> Chamber's view is that their members agreed to the move from 26% to 29% BEE in exchange for the recognition of previous deals both in existing rights and in new rights. Chamber is not agreed with the Charter proposal that an existing right holder who has exceeded the minimum 26% BEE shareholding but has since diluted will be deemed to be at the minimum 26% target and required to top-up with 3 percent to 29% minimum BEE. Chambers views are that the recognition of previous deals must apply to renewal as a 	<p>permitting a dilution below 18% is that right holder will view the 18% as the "new minimum" in the absence of mechanisms to re-empower back to 29% and this will undermine the objects of the Mining Charter.</p> <p>DMR is of the view that mining companies are in a position to ensure that compliance is achieved through locking in clauses, ensuring that the BEE sells to another BEE company, mining company retention of the right of pre-emption.</p> <p>The DMR maintains that any dilution of BEE shareholding in respect of existing rights and</p>

M 52

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>transitional period to reach the revised minimum empowerment target of 29%. (Top-up the minimum 26% BEE target by 3% up to 29% within the transitional period).</p> <ul style="list-style-type: none"> The recognition of previous deals will not apply in respect of transactions which did not achieve the minimum 26% empowerment target by the 2014/2015 year of assessment. An existing right holder who has exceeded the minimum 26% BEE shareholding but has since diluted will be deemed to be at the minimum 26% target and required to top-up with 3 percent to 29% minimum BEE shareholding within the 3 years transitional period. 	<p>renewal is not regarded as application for new right.</p> <ul style="list-style-type: none"> Chamber's views are that the Mining Charter must make provision for applications lodged before the effective date of the mining charter. 	<p>BEE transactions related thereto must trigger the 3% top up requirement irrespective of whether the right holder has exceeded the minimum 26% BEE target as part of considerations regarding the continuing consequences issue.</p> <p>The Department maintains that renewals must be excluded on the basis that a renewal of a right in terms of the Act is a separate process triggered by an application for a renewal. A renewal is not an entitlement nor is it automatic but is informed by a holder's ability to comply with the terms and</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> An existing right holder who has exceeded the minimum 26% BEE shareholding i.e is at 30% in terms of the 2010 Charter and such BEE shareholding is still intact at the date of publication of the 2017 Revised Charter will not be required to top-up with the proposed 3 percent. Section 11 applications affected by the recognition of previous deals will be processed with the recognition. Where the mining right holder who have received recognition of a previous deal applies for a renewal such right or rights or applies for new mining right or prospecting right, such mining right or prospecting 		<p>conditions of the Principal right and such renewal application, provisions of the Act and the prescribed criteria.</p> <p>DMR will consider making provision for pending applications.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	right must have a minimum of 29% BEE shareholding.		

M 5.2

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MINING CHARTER WORKSHOP: DMR AND CHAMBER OF MINES

DATE: 17 FEBRUARY 2017

VENUE: DMR BOARDROOM

AGENDA: DISCUSS THE REVIEWED MINING CHARTER ELEMENTS

ATTENDEES: ATTENDANCE REGISTER ATTACHED

Element	Detail of the Element and Targets	Chamber Views	DMR Position
1. Employment Equity	<ul style="list-style-type: none">• Board: 50% black, 25% of which must be black females.• Executive/Top Management: 50% black, 25% of which must be black females.• Senior Management: 60% black, of which 30% must be black females.• Middle Management: 75% black, of which 38% must be black females.	<ul style="list-style-type: none">• Change of the designated group from HDSA to black, as it excludes white women who make-up up to 15% of EE contribution.• The proposed targets do not have regard to current workplace profiles.• Targets for people with disabilities should be inclusive of all races and not limited to Black persons as per the gazetted Charter.	<p>The proposed targets are aligned to the BBBEEA.</p> <p>Retain the mining charter targets aligned to the BBBEEA implementation of the proposed targets progressively over a period of 3 years.</p> <p>National and Provincial demographics would be taken into account.</p>

M.J.2

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Element	Detail of the Element and Targets	Chamber Views	DMR Position
	<ul style="list-style-type: none"> • Junior Management: 88% black, of which 44% must be female • Core and Critical Skills: 40% black • Employees with disabilities: 2%. 		
2. Human Resource Development	<ul style="list-style-type: none"> • The Gazetted Charter proposed the retention of the requirement for 5% of leviable amount to be invested towards skills development by mining right holders. • The Charter further requires companies to invest 15% of the above mentioned 5% towards the Mining Transformation and Development Agency. 	<ul style="list-style-type: none"> • The Chamber does not support the 15% of 5% leviable amount contribution towards a Ministerial Skills Fund and establishment of the MTDA. • Chamber will consult its members on alternative and voluntary contributions to the MTDA • Lack of clarity over the treatment of non-employee HRD expenditure • There are multiple private and government structures that have the mandate to drive these issues 	<p>DMR agreed to change payroll to 5% of leviable amount towards HRD.</p> <p>Engagement on the structure, objects and funding of the MTDA (open mandate provided to 5-a-side by Minister to discuss objectives, potential solutions and necessity of MTDA)</p> <p>DMR to provide one pager brief on objectives of proposed MTDA</p>

Element	Detail of the Element and Targets	Chamber Views	DMR Position
		<p>(MQA, IDC, NEF, Dept. of Small Business).</p> <ul style="list-style-type: none"> • International benchmarking research from Dept Higher Education & Training shows that SA has too many centres of expertise. • Government has gazetted a proposal that 25% of skills spend be diverted to higher education. • There are current discussions at NEDLAC looking at entirety of skills landscape regarding an independent skills agency looking at sectoral and cross-cutting skills. • The National Skills Fund covers the same objectives as communicated by the DMR for the MTDA. • The focus should rather be on utilising and/or fixing existing 	

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Element	Detail of the Element and Targets	Chamber Views	DMR Position
		structures instead of creating new ones.	
3. Mine Community Development	<ul style="list-style-type: none"> The Gazetted Charter requires mining right holders to annually contribute 1% of turnover towards mine community development. 	<ul style="list-style-type: none"> The 1% turnover equivalent to an additional royalty and rather propose 2% net profit after tax (NPAT). Concern over alignment of the Mine Community and SLPs. 	<p>The Mining Charter provides for collaborative SLPs (PPP)-to improve impact.</p> <p>DMR will develop implementation guidelines for SLPs and MCDs</p> <p>Explicit linkage and alignment between MCD contributions and SLPs.</p> <p>DMR does not agree to NPAT (vs normalised earnings, operating profit, EBITDA).</p> <p>Open mandate to 5-a-side to look at practical solutions to arrive at a funding formula for community development.</p>
4. Procurement	<p>Mining Goods</p> <ul style="list-style-type: none"> A mining right holder must spend a minimum of 70% of total mining goods procurement spend on 	<ul style="list-style-type: none"> Clarity on measures to ensure supplier development meets progressive target. 	DMR has committed to extend transitional period from 3 years to 5 years for compliance- concern over

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Element	Detail of the Element and Targets	Chamber Views	DMR Position
	<p>South African manufactured goods. The abovementioned 70% of the total goods procurement spend shall be apportioned in the following manner:</p> <ul style="list-style-type: none"> • A minimum of 21 percentage points of total mining goods procurement spend must be set aside for sourcing South African manufactured goods from 50%+1 vote Black owned and controlled companies; • A minimum of 5 percentage points of total mining goods procurement spend must be set aside for sourcing South African manufactured goods from companies with a minimum of 50%+1 vote Black women 	<ul style="list-style-type: none"> • Consider use of Total Measured Procurement Spend (TMPS) vs. actual spend (exclusion of items procured from companies from foreign domicile • Increasing procurement from local BEE manufacturers is supported. • Proposed target of 70% locally manufactured goods is a marked change and increase from previous target of 40% BEE expenditure. Achievability of target is not evidence based. • Current Dept. of Trade & Industry initiatives and incentives have not yielding the desired outcomes. • Industry study on locally manufactured goods relating to mining at a nascent stage. 	<p>70% capital goods target (60% local value add).</p> <p>Government will address capacity issues.</p> <p>DMR to arrange engagement with suppliers and Chamber submission of best practice (Anglo case.)</p> <p>The onus to verify local content lies with the suppliers</p> <p>DMR to develop definitions for all criterion under this element.</p> <p>DMR agreed to provide a one page summary of all the current government initiatives to promote local manufacturing in the capital goods cluster.</p>

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Element	Detail of the Element and Targets	Chamber Views	DMR Position
	<p>owned and controlled and/or 50% +1 vote youth ownership; and</p> <ul style="list-style-type: none"> A minimum of 44 percentage points of total mining goods procurement spend of the target must be procured from companies that are at least at level 4 BEE + 26% ownership. <p>Services</p> <ul style="list-style-type: none"> A minimum of 80% of the total spend on services must be sourced from South African based companies. The abovementioned 80% of the total services procurement spend shall be apportioned in the following manner: A minimum of 65 percentage points of the total spend on 	<ul style="list-style-type: none"> The manufacturing sector has shrunk from 22% of GDP in 1985 to 13% in 2016 and manufacturing value added growth at 2.9% p.a. is half that of China and India. Until a proper analysis of the realistic targets that can be achieved for local manufacturing, it will be difficult for a proper target to be agreed. Examine the issue of enhanced recognition for SME inclusion Supplier development initiatives /approaches have to be aligned to DTI prescripts Clarity sought on recognition of those BEE entities that are above R100m threshold Basis for calculations remains unclear and need clarity on 	

M J. 2

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Element	Detail of the Element and Targets	Chamber Views	DMR Position
	<p>services must be sourced from 50% plus 1 vote Black owned and controlled companies;</p> <ul style="list-style-type: none"> • A minimum of 10 percentage points of the total spend on services must be sourced from companies with a minimum of 50%+1 vote Black women owned and controlled companies; and • A minimum of 5 percentage points of the total spend on services must be sourced from companies with a minimum of 50%+1 vote youth owned and controlled companies. <p>Processing of samples</p> <ul style="list-style-type: none"> • A mining right holder must utilise South African based facilities for the analysis of 	<p>discretionary and non-discretionary costs</p> <ul style="list-style-type: none"> • Propose BEE Scorecard approach to align Charter with BEE codes requirements to eliminate dual reporting • Explore Equity Equivalent (MNC) programmes from other sectors to address MNC Supplier contribution 	

M 5.2

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Element	Detail of the Element and Targets	Chamber Views	DMR Position
	<p>100% of all mineral samples across the mining value chain except in cases where samples are analysed for the purpose of verification of the accuracy of local laboratories.</p> <ul style="list-style-type: none"> • A mining right holder may not conduct sample analyses using foreign based facilities without the prior written consent of the Minister. <p>Verification of local content</p> <ul style="list-style-type: none"> • A mining right holder shall when submitting the annual Mining Charter report to the Department provide proof of local content for goods and services in the form of certification from the South 		

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M 5.2

Element	Detail of the Element and Targets	Chamber Views	DMR Position
	<p>African Bureau of Standards (SABS).</p> <ul style="list-style-type: none"> The responsibility to verify local content lies with the supplier of goods and or services. <p>Contribution by Foreign Suppliers</p> <ul style="list-style-type: none"> A foreign supplier must contribute a minimum of 1% of its annual turnover generated from local mining company/ies towards the Mining Transformation and Development Agency. 		
5. Housing and Living Conditions	<ul style="list-style-type: none"> This element has been omitted from the charter and is accordingly being strengthened under Housing and Living conditions standards, as provided for in Section 100 (1)(b) of the MPRDA. Transitional arrangements pertaining to mine workers housing and living conditions are provided for, pending the finalisation of the standards. 		
6. Sustainable development	Research and Development Spend	<ul style="list-style-type: none"> Sustainable development issues dealt with by relevant legislation and 	DMR has revised the Sustainable development element.

M5.2

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Element	Detail of the Element and Targets	Chamber Views	DMR Position
	<ul style="list-style-type: none"> Where a right holder intends to undertake Research and Development, the right holder must spend at least 70% of their Research and Development budget in South Africa. 50% of the 70% indicated above must be spent on South African Historically Disadvantaged Black Academic Institutions including existing institutions. <p>Environmental Management and health and safety.</p> <p>The right holder will be required to comply with the approved EMP.</p> <ul style="list-style-type: none"> On health and safety a right holder will be required to implement the 2016 	<p>inclusion as an element may lead to duplication of reporting.</p> <ul style="list-style-type: none"> Authorization in terms of R&D to be moved from Sustainable Development to HRD. Support of Academic institutions and R&D form part of the HRD element. Mine Health & Safety: Implementation of Tripartite Action Plan as articulated in the MHSC Summit Resolutions is not fully supported. <u>Environmental Management</u>: As of Dec 2014, the mining industry has been following the <i>One Environmental System</i> which requires that environmental issues in the mining industry be governed in terms of NEMA and its regulations, 	<p>3 year transitional period has been provided.</p> <p>Mechanisms to be developed to address capacity gaps in the transition period.</p> <p>Agreed that the DMR should engage the MHSC on what the specific activities should entail. Once engaged by the DMR; the MHSC Office will develop proposals for consideration by the MHSC Board.</p> <ul style="list-style-type: none"> Environmental provisions and the indicators will be aligned with NEMA provisions.

M5.2

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Element	Detail of the Element and Targets	Chamber Views	DMR Position
	Occupational Health and Safety Summit Milestones.	<p>with the DMR being the competent authority.</p> <ul style="list-style-type: none"> • The Mining Charter is promulgated in terms of the MPRDA and with the environmental provisions being moved to NEMA; there is no enabling legislative mechanism for measuring environmental performance in the MPRDA. • In order to assess the compliance level of the mining industry in relation to environmental management, a qualitative analysis or assessment of each individual environmental requirement in terms of the law needs to be undertaken. Measures implemented beyond the requirements of the law should also be taken into consideration. It will be impossible to come to a conclusion of 	

MJ.2 MK

Element	Detail of the Element and Targets	Chamber Views	DMR Position
		<p>a particular percentage level compliance with the current scorecard. Thus, making it difficult to formulate tangible indicators to allow for quantitative measurements of environmental compliance level for the mining industry.</p> <ul style="list-style-type: none"> On the other hand, companies with EMP's approved in terms of the MPRDA would be deemed to having obtained an environmental NEMA. The Legal basis for inclusion of environmental issues is questionable and therefore the Chamber does not support the inclusion of this element in the Mining Charter. 	
7. Applicability of the Mining Charter.	<ul style="list-style-type: none"> The Charter provides for 3 ring-fenced elements (Mine community development, HRD and Ownership) and mining 	<ul style="list-style-type: none"> 100 percent compliance at all times in respect of the ring-fenced elements is not feasible: Ownership, 	DMR will be transparent in enforcement as aligned to the legislation.

1339

M5-2

M.K

Element	Detail of the Element and Targets	Chamber Views	DMR Position
	right holders are required to maintain 100 percent compliance with these targets at all times for the duration of a mining right.	HRD, Mine Community Development <ul style="list-style-type: none"> • Periodic Review of Targets • Charter to provide exemptions for small and medium sized operations in line with National Small Business Amendment Act (26 of 2003) • Establishment of sub-minimums 	Remedies for each of the ring-fenced elements have been discussed and recommended. Periodic assessments to be consulted with stakeholders. 100% compliance is justifiable if agreement is reached on each of the 3 priority elements. DMR does not agree to further exemptions for small and medium sized operations.
8. Independent verification	<ul style="list-style-type: none"> • The Charter obliges right holders to report their levels of compliance annually and empowers the Minister to review the Charter as and when the need arises. 	<ul style="list-style-type: none"> • Chamber is concerned about the absence of a verification provision in the Charter. 	The responsibility to evaluate, monitor and enforce the law lies with the DMR. DMR will develop guidelines and measurement principles up front. Periodic assessments will help track the progress over time.
9. General	<ul style="list-style-type: none"> • DMR has undertaken a socio-economic impact assessment relating to the Mining Charter, which will be made available in due course. 		

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MINING CHARTER WORKSHOP: DMR AND CHAMBER OF MINES

DATE: 20 MARCH 2017

VENUE: DIEP IN DIE BERG

AGENDA: DISCUSS THE REVIEWED MINING CHARTER ELEMENTS

ATTENDEES: ATTENDANCE REGISTER ATTACHED

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
1.Ownership	<p>NEW MINING RIGHTS</p> <ul style="list-style-type: none">A new mining right must have a minimum target of 29% black person's ownership per mining right or in the mining company which holds the mining right/s in the following manner:<ul style="list-style-type: none">(i) The BEE partners shall include workers in the form of ESOPS (or any other	<ul style="list-style-type: none">Chamber is opposed to the DMR's proposals for "deeming provision" on ownership of existing right holders and more later diluted to below 26% BEE.Chamber views is that the principle of once empowered, always empowered must be maintained.	<p>The DMR maintains that dilution must be limited to not below 18% and a right holder must re-empower back to 29%. DMR's concern is that the unintended consequences of permitting a dilution below 18% is that right holder will view the 18% as the "new minimum" in the absence of mechanisms to re-empower back to 29% and this will undermine the objects of the Mining Charter.</p>

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>structure) and BEE entrepreneurs.</p> <p>(ii) The 29% stake must be acquired in not less than a minimum of 10% economic interest plus corresponding percentage of voting rights to each BEE partner.</p> <p>(iii) The 29% BEE shareholding shall be held in an entity/ies which is/are separate from the mining right holder.</p> <p>(a) Where a BEE partner wishes to exit, BEE shareholding shall not be diluted to below 18%.</p> <p>(b) Full empowerment credentials shall be recognised for a period of three years from the date of exit, provided that:</p>	<p>Dilution below 18% must be allowed and re-empowerment must be back to 18% not 29%.</p> <p>The signing of the settlement agreement and letters recognising previous deals is significant to Chamber members.</p> <p>Chambers views are that the recognition of previous deals must apply to renewal as a renewal is not regarded as application for new right</p>	<p>The DMR maintains that any dilution of BEE shareholding in respect of existing rights and BEE transactions related thereto must trigger the 3% top up requirement irrespective of whether the right holder has exceeded the minimum 26% BEE target as part of considerations regarding the continuing consequences issue.</p> <p>The Department maintains that renewals must be excluded on the basis that a renewal of a right in terms of the Act is a separate process triggered by an application for a renewal. A renewal is not an entitlement</p>

M.F.2 Mh

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(i) A BEE partner held the empowerment shares for a minimum period of three years;</p> <p>(ii) Net value based on time graduation factor was realised; and</p> <p>(iii) A holder's BEE shareholding must be at 29% at the time a BEE partner wishes to exit.</p> <p>(d) Where a BEE partner has exited in line with paragraphs (b) and (c), the empowerment shall be recognised for a period of three years after which a mining right holder must re-empower up to a minimum of 29%.</p> <p>EXISTING MINING RIGHTS</p>		<p>nor is it automatic but is informed by a holder's ability to comply with the terms and conditions of the Principal right and such renewal application, provisions of the Act and the prescribed criteria.</p>

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(a) A historical transaction concluded prior to the coming into operation of the reviewed Mining Charter 2016 that achieved the minimum 26% or more empowerment target by 30th June 2016 shall be recognised for the duration of the mining right.</p> <p>(b) This shall apply to an existing right holder whose:</p> <p>(i) partner/s have exited, BEE contract lapsed or the previous BEE partner transferred shares to a non-BEE company;</p> <p>(ii) BEE agreement contains a BEE exit clause which is applicable after the coming</p>		

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Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>into operation of the Mining Charter 2016.</p> <p>(c) A right holder who claims the recognition of previous deals shall be deemed to have achieved a minimum of 26% BEE target irrespective of actual BEE shareholding and therefore required to top up its empowerment target to 29% BEE.</p> <p>(d) An existing mining right holder who after the coming into operation of the Mining Charter 2016 has maintained a minimum of 26% BEE shareholding shall be required to top up BEE empowerment to 29%.</p>		

MF

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(e) An existing mining right holder who has acquired and maintained more than 29% BEE shareholding shall not be required to top up its BEE.</p> <p>(f) The recognition of previous deals shall include historical deals concluded on units of production, share asset deals including deals where the BEE partners have sold their shareholding and all historical BEE deals which formed the basis upon which new order mining rights were granted.</p> <p>(g) The BEE deal referred to above may be at company level, asset level or cover all operations.</p>		

MJ:7 MK

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>(h) The recognition of previous deals shall not apply to transactions which did not achieve a minimum of 26% empowerment target by 30th June 2016.</p> <p>(i) Section 11 applications affected by the recognition of previous deals will be processed with the recognition.</p> <p>(j) Where the mining right holder who have received recognition of a previous deal applies for a new mining right or prospecting right, such mining right or prospecting right must have a minimum of 29% BEE shareholding.</p>		

M.S. 2

Mk

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	(k) The recognition of previous deals shall not be recognised on application for renewal of a right/rights on which a deal was previously recognised.		
2. Human Resource Development (HRD)	<ul style="list-style-type: none"> • The Gazetted Charter proposed the retention of the requirement for 5% of payroll to be invested towards skills development by mining right holders. • The Charter further required companies to invest 15% of the above mentioned 5% towards a Ministerial Skills Development Trust Fund. 	<ul style="list-style-type: none"> • Applicability of the Charter and Human Resources Development issues are deferred to a later date. 	Applicability of the Charter and Human Resources Development issues are deferred to a later date
3. Mine Community Development	<ul style="list-style-type: none"> • The Gazetted Charter requires mining right holders to annually contribute 1% of turnover 	<ul style="list-style-type: none"> • The 1% turnover equivalent to an additional royalty and rather propose 2% net profit after tax (NPAT) 	DMR is still opposed to the use of NPAT.

115.2 Mb

1348

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	towards mine community development.	<ul style="list-style-type: none"> Concern over alignment of the Mine Community and SLPs. 	
4. Procurement	<p>Mining Goods</p> <ul style="list-style-type: none"> A mining right holder must spend a minimum of 70% of total mining goods procurement spend on South African manufactured goods. The abovementioned 70% of the total goods procurement spend shall be apportioned in the following manner: A minimum of 21 percentage points of total mining goods procurement spend must be set aside for sourcing South African manufactured goods from 50%+1 vote Black owned and controlled companies; 	<ul style="list-style-type: none"> 70% targets for capital goods is not achievable and will submit further inputs for procurement element. 	There were discussions regarding the sufficiency of the proposed 70% target for goods and the 5 years transitional period. A team comprising, Dti, DMR, Chamber and manufactures to meet of consider alternatives and give feedback by Friday.

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> • A minimum of 5 percentage points of total mining goods procurement spend must be set aside for sourcing South African manufactured goods from companies with a minimum of 50%+1 vote Black women owned and controlled and/or 50% +1 vote youth ownership; and • A minimum of 44 percentage points of total mining goods procurement spend of the target must be procured from companies that are at least at level 4 BEE + 26% ownership. <p>Services</p> <ul style="list-style-type: none"> • A minimum of 80% of the total spend on services must be sourced from South African based 		

M.T. 2 MK

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>companies. The abovementioned 80% of the total services procurement spend shall be apportioned in the following manner:</p> <ul style="list-style-type: none"> • A minimum of 65 percentage points of the total spend on services must be sourced from 50% plus 1 vote Black owned and controlled companies; • A minimum of 10 percentage points of the total spend on services must be sourced from companies with a minimum of 50%+1 vote Black women owned and controlled companies; and • A minimum of 5 percentage points of the total spend on services must be sourced from 		

M T. Z Mk

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>companies with a minimum of 50%+1 vote youth owned and controlled companies.</p> <p>Processing of samples</p> <ul style="list-style-type: none"> • A mining right holder must utilise South African based facilities for the analysis of 100% of all mineral samples across the mining value chain except in cases where samples are analysed for the purpose of verification of the accuracy of local laboratories. • A mining right holder may not conduct sample analyses using foreign based facilities without the prior written consent of the Minister. <p>Verification of local content</p>		

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M. J. Z

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> • A mining right holder shall when submitting the annual Mining Charter report to the Department provide proof of local content for goods and services in the form of certification from the South African Bureau of Standards (SABS). • The responsibility to verify local content lies with the supplier of goods and or services. <p>Contribution by Foreign Suppliers</p> <ul style="list-style-type: none"> • A foreign supplier must contribute a minimum of 1% of its annual turnover generated from local mining company/ies towards the Mining Transformation and Development Agency. 		

M.E. 2 Mk

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
5. Housing and Living Conditions	<ul style="list-style-type: none"> Element removed and issues to be dealt with under the Housing and Living Condition standards. 	Chamber agrees with the removal of this element from the Charter.	The issue of removal of the Standards from the Mining Charter has been agreed to and resolved.
6. Sustainable development	<p>Research and Development Spend</p> <ul style="list-style-type: none"> Where a right holder intends to undertake Research and Development, the right holder must spend at least 70% of their Research and Development budget in South Africa. 50% of the 70% indicated above must be spent on South African Historically Disadvantaged Black Academic Institutions including existing institutions. <p>Environmental Management and health and safety.</p>	<ul style="list-style-type: none"> Chamber supports the 70% expenditure on R&D however still has concerns about the measures, guidelines and capacity of the Historically Disadvantaged Black Academic Institutions. 	<p>The 70% expenditure on R&D is agreed.</p> <p>Environmental and health and safety measures are still work in progress.</p> <p>Government will address capacity issues at Historically Disadvantaged Black Academic Institutions.</p>

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<ul style="list-style-type: none"> The right holder will be required to comply with the approved EMP. On health and safety a right holder will be required to implement the 2016 Occupational Health and Safety Summit Milestones. 		
7. Employment Equity	<ul style="list-style-type: none"> Mining Charter 2016 requirements are: Board: 50% black, 25% of which must be female. Executive Management (Board) 50% black, 25% of which must be black females. A minimum of 50% Black people proportional representative at the executive director's level as a percentage of all executive 	<ul style="list-style-type: none"> Chamber still believes that the employment equity targets are not achievable and will submit further motivation. 	DMR has noted Chamber comments and will await the motivation.

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>directors of which 25% must be black females.</p> <p>Senior Management (EXCO):</p> <ul style="list-style-type: none"> • 60% black employees in Senior Management of which 30% is black females. <p>Middle Management level:</p> <ul style="list-style-type: none"> • 75% black employees in the Middle management as proportional representation percentage of all middle management of which 38% must be black females. <p>Junior Management level:</p> <ul style="list-style-type: none"> • A minimum of 88% black employees in junior management as a proportional representative percentage of all junior 		

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
	<p>management of which 44% is black females.</p> <ul style="list-style-type: none"> • Core and Critical Skills: a minimum of 40% black people are represented in the mining company's core and critical skills by diversifying their existing pools. • Employees with disabilities: 2% of black employees with disabilities as a percentage of all employees. 		
8. General		<ul style="list-style-type: none"> • Chamber is of the view that the Dti Codes have built in flexibility provisions including sub-targets and the Department does not seem to have followed the BBBEE Act process of establishing a sector Code. 	<p>The department is of the view that the Charter is derived from section 100 of the MPRDA. Minister mandated to transform the industry consistent with the BBBEE Act as the overarching legislation on transformation. Alignment is in respect of the</p>

Element	Detail of the Element and Targets	Chamber Views	DMR'S position
			definitions and concepts and it is work in progress.

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14.2. The Holder shall furnish to the Regional Manager all such monthly returns contemplated in section 28 (2) A of the Act not later than the 15th day of the month following the month in respect of which it was reported.

14.3 The Holder shall furthermore at the end of each year following commencement of this mining right, inform the Regional Manager in writing of any new developments and of the future mining activities planned in connection with the exploitation/mining of the minerals on the Mining Area.

15. Minister's liability for Payment of Compensation

The Minister shall not at any time be liable or responsible for the payment of compensation of whatever nature to the Holder, the Holder's successors-in-title or assignee, or any person whomsoever as a result of the conversion of this right.

16. Compliance with the Laws of the Republic of South Africa

The conversion of this Right, does not exempt the Holder and its successors in title and/or assigns from complying with the relevant provisions of the Mine Health and Safety Act, (Act No.29 of 1996) and any other law in force in the Republic of South Africa.

17. Provisions relating to section 2(d) and (f) of the Act

In the furthering of the objects of this Act, the Holder is bound by the provisions of an agreement or arrangement dated **DAY MONTH YEAR** entered into between the Holder/empowering partner and **NAME OF EMPOWERMENT PARTNER** (the empowerment partner) which agreement or arrangement was taken into consideration for purposes of compliance with the requirements of the Act and or Broad Based Economic Empowerment Charter developed in terms of the Act and such agreement shall form part of this right.

18. Social and Labour Plan

18.1 The holder must annually, not later than three months before the end of its financial year, submit a detailed implementation plan to give effect to Regulation 46(e) (i), (ii) and (iii) in line with the Social and Labour Plan.

18.2 The holder must annually, not later than three months after finalisation of its audited annual report, submit a detailed report on the implementation of the previous year's social and labour plan.

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- 12.3. If the Holder does not take the measures as specified by the Minister to remedy a contravention, breach or failure, and after having considered any representations by the holder in terms of clause 12.2.3, the Minister may suspend or cancel this right.

13. Records and Returns

- 13.1. The Holder shall maintain all such books, plans and records in regard to prospecting operations on the Prospecting Area as may be required by the Act and shall furnish to the office of the Regional Manager such reports and documents as may be relevant under this right.
- 13.2. The Holder shall annually furnish to the Regional Manager progress reports contemplated in section 21 (1) (b) of the Act in such a manner and on such timeframes as prescribed by Regulation 8.
- 13.3. The Holder shall furthermore at the end of each year following commencement of this prospecting right, inform the Regional Manager in writing of any new developments and of the future prospecting activities of the mineral/s on the Prospecting Area.

14. Minister's Liability for Payment of Compensation

The Minister shall not at any time be liable or responsible for the payment of compensation of whatever nature to the Holder, the Holder's successors-in-title or assigns, or any other person, as a result of the granting of this prospecting right.

15. Compliance with the laws of the Republic of South Africa

The granting of this right does not exempt the Holder and its successors in title and/or assigns from complying with the relevant provisions of the Mine Health and Safety Act, 1996, (Act no.29 of 1996) and any other relevant law in force in the Republic of South Africa.

16. Provisions relating to section 2(d) of the Act

In the furthering of the objects of this Act, the Holder is bound by, where applicable, the provisions of an agreement or arrangement dated **DAY MONTH YEAR** entered into between the Holder/ empowering partner and **NAME OF EMPOWERMENT PARTNER** (the empowerment partner) which agreement or arrangement was taken into consideration for purposes of compliance with the requirements of the Act and or Broad Based Economic Empowerment Charter developed in terms of the Act and such agreement shall form part of this right.

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14. Records and Returns

- 14.1. The Holder shall maintain all such books, plans and records in regard to mining on the Mining Area as may be required by the Act and shall furnish to the office of the Regional Manager such reports and documents as may be relevant under this right.
- 14.2. The Holder shall furnish to the Regional Manager all such monthly returns contemplated in section 28 (2) A of the Act not later than the 15th day of the month following the month in respect of which it was reported.
- 14.3. The Holder shall furthermore at the end of each year following commencement of this mining right, inform the Regional Manager in writing of any new developments and of the future mining activities planned in connection with the exploitation/mining of the minerals on the Mining Area.

15. Minister's liability for Compensation

The Minister shall not at any time be liable or responsible for the payment of compensation of whatever nature to the Holder, the Holder's successors-in-title or assignee, or any person whomsoever as a result of the granting of this right.

16. Compliance with the Laws of the Republic

The granting of this Right, does not exempt the Holder and its successors in title and/or assigns from complying with the relevant provisions of the Mine Health and Safety Act, (Act No.29 of 1996) and any other law in force in the Republic of South Africa.

17. Provisions relating to section 2(d) and (f) of the Act

In the furthering of the objects of this Act, the Holder is bound by the provisions of an agreement or arrangement dated **DAY MONTH YEAR** entered into between the Holder/ empowering partner and **NAME OF EMPOWERMENT PARTNER** (the empowerment partner) which agreement or arrangement was taken into consideration for purposes of compliance with the requirements of the Act and or Broad Based Economic Empowerment Charter developed in terms of the Act and such agreement shall form part of this right.

18. Social and Labour Plan

- 18.1. The holder must annually, not later than three months before the end of its financial year, submit detailed implementation plan to give effect to Regulation 46(e)(i),(ii)and (iii) in line with the Social and Labour Plan.

- 13.1. The Holder shall maintain all such books, plans and records in regard to prospecting operations on the Prospecting Area as may be required by the Act and shall furnish to the office of the Regional Manager such reports and documents as may be relevant under this right.
- 13.2. The Holder shall annually furnish to the Regional Manager progress reports contemplated in section 21 (1) (b) of the Act in such a manner and on such timeframes as prescribed by Regulation 8.
- 13.3. The Holder shall furthermore at the end of each year following commencement of this prospecting right, inform the Regional Manager in writing of any new developments and of the future prospecting activities of the mineral/s on the Prospecting Area.

14. Minister's Liability for Payment of Compensation

The Minister shall not at any time be liable or responsible for the payment of compensation of whatever nature to the Holder, the Holder's successors-in-title or assigns, or any other person, as a result of the granting of this prospecting right.

15. Compliance with the laws of the Republic of South Africa

The granting of this right does not exempt the Holder and its successors in title and/or assigns from complying with the relevant provisions of the Mine Health and Safety Act, 1996, (Act no.29 of 1996) and any other relevant law in force in the Republic of South Africa.

16. Provisions relating to section 2(d) of the Act

In the furthering of the objects of this Act, the Holder is bound by, where applicable, the provisions of an agreement or arrangement dated **DAY MONTH YEAR** entered into between the Holder/ empowering partner and **NAME OF EMPOWERMENT PARTNER** (the empowerment partner) which agreement or arrangement was taken into consideration for purposes of compliance with the requirements of the Act and or Broad Based Economic Empowerment Charter developed in terms of the Act and such agreement shall form part of this right.

17. Severability

Notwithstanding anything to the contrary, any provision of this prospecting right which is contrary to any provision of the Act or which is otherwise ultra vires, null and void, voidable, or unenforceable, shall be severable from the rest of this Right, such rest thus being and remaining of full force, effect and enforceability.

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Mining Charter Assessment

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	COMPANY NAME: Sasol Mining (Pty) Ltd
	MINING RIGHT FILE NUMBER : MP 30/5/1/2/2/138 MR
	MINE CODE (IF ANY):
	COMMODITY: Coal, Pseudocoal, Torbanite/Oilshale
TABLE OF CONTENTS 2016	
No	
1	Ownership Summary
2	Meaningful Economic Participation
3	Full Shareholder Rights

We have attempted to complete the template as thoroughly as possible.
We have some uncertainties regarding the requirements in some areas.
If you require any further information, please do not hesitate to contact us.

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1365

Full Shareholder Rights

Transaction		African	Coloured	Indian	White Female	Chinese	Total HDSA	Dividend Declared			Total %	Marketing Fees		Total %	Management Control		Total %	Comment						
(Yes/No)	Share Sale (Yes/No)							Principal Company	BEE Entity	Total	BEE Entity	Principal Company	BEE Entity	Total	BEE Entity	Principal Company	BEE Entity		Total	BEE Entity				
	Yes	Not measured in this way					0	R 4,608,680,489.68	R 1,079,229,140.80	R 5,687,909,630.49		R 0.00	R 0.00	R 0.00		80%	20%	100%	20%	See comments on the table of contents and summary sheets				
	Yes						0						R 449,351,223.00	R 449,351,223.00		R 0.00	R 0.00	R 0.00						
							0																	
							0																	
							0																	
							0																	
							0																	
							0																	
		0	0	0	0	0	0														0%	0%	20%	

AS PER MINING CHARTER NOMENCLATURE

Meaningfull Economic participation - 2013

[illegible]

[illegible]

1368

PROCUREMENT AND ENTERPRISE DEVELOPMENT

	COMPANY NAME: Sasol Mining (Pty) Ltd
	MINING RIGHT FILE NUMBER : MP 30/5/1/2/2/138 MR
	MINE CODE (IF ANY):
	COMMODITY: Coal, Pseudocoal, Torbanite/Oilshale
	TABLE OF CONTENTS: 2016
1	Discretionary spent
2	Summary of procurement spent on BEE entities : capital goods, services, consumables and multi-national suppliers
3	Enterprise Development

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TOTAL MEASURED PROCUREMENT SPENT (DISCRETIONARY SPENT)				
Expense Item		Actual Rand Value	Last Audited Annual Financial Statement (AFS) to be used Reference	Comments
1	Cost sales			
2	Operational expenditure			Information cannot be supplied as no AFS is drafted for the Secunda Complex. Also note that Sasol Ltd's financial year runs from July to June
3	Capital expenditure			
4	Any other, including inter – company expenses (Only if not included in 1,2 or 3 above)			
5	Subtotal			
6	Less Exclusions			
6.1	Less: Taxes, levies, municipality rates			
6.2	Less: Public Sector Procurement			
6.3	Less: Salaries, wages & directors emoluments			
6.4	Less: Pass-through 3 rd Party Procurement			
6.5	Less: Investments, loans, donations qualifying as Enterprise development and Socio-economic contributions			
6.6	Less: Qualifying Imports			
6.7	Less : Goods and services where there are no local suppliers or manufacturers			
6.8	Less: Goods and services with a different technical specification to those available from local manufacturers			
6.9	Less : Goods and services carrying a brand different to that available from local manufacturers			
6.10	Other: Please Specify			
7 Total Measured Procurement Spent / Discretionary procurement				
EXCLUSIONS				
The following are examples of Import exclusions:				
1	Goods and services where there are no local suppliers or manufacturers			
2	Goods and services carrying a brand different to that available from local manufactures			
3	Goods and services with a different technical specification to those available from local manufacturers			

1370

SUMMARY PROCUREMENT SPENT ON BEE ENTITIES AS AT 31 DECEMBER 2016

a) Summary of the procurement spent on BEE entities in terms of capital goods, services and consumables

b) Summary of multi-national suppliers contribution to social fund

No	Type of Product Procured	Total Procurement from SA Suppliers	Total Procurement from Multinational Suppliers	Total Spent Per Annum	Non-Discretionary Spent	Discretionary Spent	Target 2016	Spent with BEE Entities
		(R'000)	(R'000)	(R'000)	(R'000)	(R'000)		(R'000)
1	Capital Goods	1,001,074.0	110,654.6	1,111,728.6		1,111,728.6	00%	921,820.5
2	Services	4,006,421.8	181,527.0	4,187,948.8		4,187,948.8	70%	3,237,125.7
3	Consumables	2,410,252.6	306,960.3	2,717,212.9		2,717,212.9	50%	1,387,903.3
Total		7,417,748.4000	599,141.9000	8,016,890.3000	0.0000	8,016,890.3000		5,546,849.5000

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ENTERPRISE DEVELOPMENT AS AT 31 DECEMBER 2016

a) Provide list of initiatives, detailing what the initiative entailed, the beneficiaries and amount spent elaborating more on the impact of the initiative

No	Name of Enterprise	Enterprise Development Initiative		Sustainable Set Asides	Details/Type of Initiative or Programme	Comments
		Monetary (Rands)	Non-Monetary			
1	List Cleaning Chemicals	R 4,677,853		R 1,172,272	Loan funding for working capital including loan consolidation R4.7 million	Sustainability of supply and improved cash flow management
2	Metallica Engineering and Construction Services CC	R 0	Scope extension	R 7,158,765	Diversify service offering	Scope of service offering now includes building construction
3	Tuscan Mood	R 0	Capacity building	R 25,333,699	Pursuing loan opportunities to purchase assets	Improve asset utilizing capacity
4	Emailini Enterprises 7 CC	R 0	Capacity building	R 2,644,892	Pursuing loan opportunities to purchase assets	Improve asset utilizing capacity
5	Shilenge Belts and Pulleys	R 0	Monitoring & Coaching	R 999,288	Monitoring of implementation of SHE and QMS	To ensure compliance with Industry requirements
6	Shisela Construction & Light Engineering	R 3,194,844		R 17,960,116	Financial accounting, HR & Payroll package (R46 919) + Loan Funding (R3 147 925.09) for building a warehouse.	Building capacity within the business to improve management efficiencies.
7	Kentsa Civil Construction		Performance monitoring	R 1,764,282	Performance management (on the job training)	To ensure successful completion of projects
8	Phakama Advertising (HLP Media)	R 7,500	Marketing		Marketing	To position business to position itself optimally for opportunities.
9	Izazi Mining		Scope extension	R 59,655,509	Service offering diversification	Now also does underground construction
10	Reunko Steel		Several business management training	R 16,200,135	Workshops and trainings on business management	To improve sustainability of the business
11	Izigi Consulting	R 0	Several business management training	R 1,712,382	Workshops and training on business management. Performance management (on the job training)	To ensure successful completion of projects, thus also improved business sustainability
12	Mziwethu Holdings	R 0	Mentoring & Coaching	R 785,273	On the job coaching for the delivery of employees houses.	Quality of work resulted in company being accepted by FNB as a Supplier in their housing (builders) category.
13	Mavutha Contractors	R 0		R 9,980	Previously supported with SHE and QMS	Awarded a project in Electrical Infrastructure rejuvenation.
14	Metahuma	R 0	ARIBA registration	R 1,581,869	Vendor Registration process	Awarded a project in Electrical Infrastructure rejuvenation.
15	Lathoma Labour Hire	R 0		R 1,082,400	Several business management training	Awarded a project to construct a bridge (road)
16	New Heights 1164 CC	R 0	OSH Act guidance	R 1,042,586	Implementation of safety, health and environment (SHE) file before contract kick-off	Adherence to Legislative and Industry requirements.
17	At this Moment	R 0	ARIBA registration	R 0	Vendor Registration process	Consideration for future opportunities
18	Khanozama Projects	R 0	ARIBA registration	R 275,940		
19	Suka Projects	R 0	Vendor registration	R 0	Previously supported with SHE and (quality management system) QMS	Vendor registration enablement. Successfully registered on vendor base.
20	Lesiamo's Trading	R 0	ARIBA registration		Previously supported with SHE and QMS	Vendor registration enablement. Successfully registered on vendor base.
21	Dream African Foundation		ARIBA registration	R 472,590	Vendor Registration process and transactional support on awarded transact	Compliance to Industry requirements as a service provider.
22	Taktho Environmental	R 0	ARIBA registration	R 0	Approved to be on Sasol Vendor Base	Awarded Environmental monitoring contract on a project.
23	Ndiuwakho Construction	R 0	ARIBA registration	R 0	Previously supported with SHE and QMS	Was unsuccessful in RFQ. Consideration for future opportunities
24	Dikwankwehla Construction	R 0	ARIBA registration	R 0	Previously supported with SHE and QMS	Vendor registration enablement. Successfully registered on vendor base.

ENTERPRISE DEVELOPMENT AS AT 31 DECEMBER 2016

a) Provide list of initiatives, detailing what the initiative entailed, the beneficiaries and amount spent elaborating more on the impact of the initiative

No	Name of Enterprise	Enterprise Development Initiative		Sustainable Set Asides	Details/Type of Initiative or Programme	Comments
		Monetary (Rands)	Non-Monetary			
25	Izidonga Ze Africa	R 164,520	ARIBA registration	R 0	Vendor Registration process	Consideration for future opportunities
26	Simvic	R 0	ARIBA registration	R 0	Previously supported with SHE and QMS	Consideration for future opportunities
27	Khashu Projects	R 0	ARIBA registration	R 0	Vendor Registration process	Consideration for future opportunities
28	TMS Consulting	R 0		R 0	Professional category considerations	Was unsuccessful in RFQ. Consideration for future opportunities
29	EL Gondor Trading	R 0	Marketing	R 0	Networking and marketing	Was unsuccessful in Group RFQ. Consideration for future opportunities
30	SRK 3 Consulting	R 0	ARIBA registration	R 0	Vendor Registration process	Was unsuccessful in RFQ. Consideration for future opportunities
31	Muziwakhe Trading	R 0	ARIBA registration	R 0	Previously supported with SHE and QMS	Consideration for future opportunities
32	Dignit Construction	R 0		R 0	Previously supported with SHE and QMS	Consideration for future opportunities
33	Ngwenya Mining	R 0	Mining licence application	R 0	Mining licence application	Consideration for future opportunities
34	CSM Cooling Towers			R 0	Previously supported with SHE and QMS	Consideration for future opportunities
35	Sanglin Construction	R 0	ARIBA registration	R 0	Previously supported with SHE and QMS	Consideration for future opportunities
36	Peneul Nathi	R 0	Several business management training	R 3,600,356	SMME Financing, Marketing	Expanded services to Secunda Operations
37	MBH Bulk Hauliers	R 24,170		R 423,468	Marketing Plan	Diversify the market
TOTAL		R 8,068,887		R 143,878,601		

Mining Charter Online Audit
BEE ownership template – Comments section
Sasol Mining – 9 March 2017

Notes for Inzalo ESOP:

- Data completed as at 30 June of each year = Audited data at Sasol financial year end.
- Inzalo ESOP registration number: IT1180/2008
- Inzalo MSOP registration number: IT1178/2008
- Inzalo ESOP identifiable beneficiaries noted as 28% as per written credit recognition communication from DMR to Sasol
- Up to financial year 2014, ESOP dividends are approximations based on the proportion of Sasol Mining employees vs total Sasol employees participating in the Inzalo ESOP. Dividend data for financial years 2015 and 2016 are actual data.
- Value of the transaction can only be reliably determined at its maturity date
- Projected maturity date 2019
- "Vesting date" is interpreted as the date the transaction became effective
- Dividends reflected are cumulative to financial year end

Notes for Ixia Coal:

- Data completed as at 30 June of each year = Audited data at Sasol financial year end.
- Ixia Coal registration number: 2007/020845/07
- Ixia Coal holds 20% shareholding in Sasol Mining
- Communities effectively hold 6% of Sasol Mining through Ixia Coal (through Women Investment Portfolio Holdings and Mining (Women Investment Trust))
- The value of the transaction can only be reliably determined at its maturity date
- "Vesting date" is interpreted as the date the transaction became effective
- Dividends reflected are cumulative to financial year end

AngloGold Ashanti Vaal River Operations

Mining Charter Report 2015

Date of original submission: 28 April 2016

Vaal River Mining Rights:

1. MPTRO REF: 12/2009, including endorsement in terms of Section 102 MPTRO REF: 15/2012 (DMR Reference No.: NW30/5/1/1/2/016MR) ("Vaal River Operations: Moab Khotsong, Great Noliwa and Kopanang mines"). The MPRDA Section 102 application to incorporate Mine Waste Solutions into this Mining Right was granted on 13 July 2015. The DMR granting letter was corrected and reissued on 6 November 2015 and AGA is currently awaiting an executive date to sign such Deed of Variation.

2. MPTRO REF: 05/2008 (DMR Reference No.: NW30/5/1/2/2/04MR) ("Edom and Kleinfontein")

3. MPTRO REF: 80/2007 (DMR Reference No.: NW30/5/1/2/2/15MR) ("Moab Extension")

4. MPTRO REF: 105/2013 (DMR Reference No.: NW30/5/1/1/2/14MR) in respect of the "Farm Grootdraai". The Section 102 application for inclusion of minerals and extension of this mining area to include further farm portions i.e. Vaalbrug Dolomiet, De Pont Landing and Altona was granted on 24 April 2015, executed on 19 June 2015 and is currently awaiting registration at the Mineral and Petroleum Titles Registration Office.



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Mining Charter Assessment

1375

Organizational shareholders. ESOPS, Community and other groups or SPVs

Organizational shareholders. ESOPS, Community and other groups or SPVs

AS PER MINING CHARTER NOMENCLATURE															Per BEE detailed ownership scorecard and certificate if available														
AS PER MINING CHARTER NOMENCLATURE															AS PER GENERIC BEE TERMINOLOGY														
1	2	3	4		5	6	7	8	9		10				11	12	13	14		15	16	17	18	19	20	21	22		23
Shareholder Name	Type (Trust, CC, PTY, Co-op)	Shareholder grouping: 1 Community, 2 ESOPS, 3 BEE entrepreneur	Registration No		B		C		I		W		W		RSA Entity (Yes / No)	% meaningful participation	Flow-thru or MFT	Shareholding meets Mining Charter requirements Y/N	Comments		% Economic Interest held	% Exercisable Voting Rights held	Transaction Price (1)	Current Transaction Value (2)	Amount owing for shares purchased (3)	Net Value % (4) (2-3)/2	3 rd Party rights held against shareholding	New Entrant (Yes/No)	Comment
					M	F	M	F	M	F	F	Tot	HDSA	M	Grand Total	Y/N	F/M	Y/N									Y/N	Y/N	
1	Bokamoso ESOP Trust	Trust	2	IT12639/06	86	6	0	0				2	93	7	100	Y	4.5	Y			4.5	4.5						Y	
2	Izingwe Holdings	PTY	3	2005/039350/0 7								0	0	0	Y	1.5	Y	Izingwe is owned by four different family trusts as detailed in the attached Izingwe confirmation of ownership		1.5	1.5						Y		
3	ARMgold	PTY	3									0	0	0	Y	20.8	Y	The ARMgold transaction details explained in the supplimentary note attached		20.8	20.8						Y		
TOTAL					86	6	0	0	0	0	2	93	7	100		26.8					26.8	26.8	0	0	0		0		

The combined lists of organizational shareholders to add up to all HDSA shareholding by non-individuals.

NB: List ESOPS and Community shareholders on separate sheets from other shareholders.

Can list individual shareholders or state summary % and refer to annexure with such details

NB Use as many pages as required or refer to summaries that add up to numbers used.

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Mining Charter Assessment

1376

Organizational shareholders. ESOPS, Community and other groups or SPVs

Organizational shareholders. ESOPS, Community and other groups or SPVs

AS PER MINING CHARTER NOMENCLATURE															Per BEE detailed ownership scorecard and certificate if available													
1	2	3	4		5	6	7	8	9		10			11	12	13	14		15	16	17	18	19	20	21	22		23
No.	Shareholder Name	Type (Trust, CC, PTY, Co-op)	Shareholder grouping 1: Community, 2: ESOPS, 3: BEE entrepreneur	Registration No	B	C	I	W		W				RSA Entity (Yes / No)	% meaningful participation	Flow thru or MFT	Shareholding meets Mining Charter requirements Y/N		Comments	% Economic Interest held	% Exercisable Voting Rights held	Transaction Price(1)	Current Transaction Value(2)	Amount owing for shares purchased: (3)	Net Value % (4) (2)/(1) x 100	3 rd Party rights held against shareholding	New Entrant (Yes/No)	Comment
					M	F	M	F	M	F	F	Tot	HDSA	M	Grand Total	Y/N	F/M	Y/N						Y/N	Y/N			
1	Bokamoso ESOP Trust	Trust	2	IT12639/06	86	6	0	0			2	93	7	100	Y	4.5	Y			4.5	4.5						Y	
2	Izingwe Holdings	PTY	3	2005/039350/07							0	0	0	Y	1.5	Y	Izingwe is owned by four different family trusts as detailed in the attached Izingwe confirmation of ownership		1.5	1.5						Y		
3	ARMgold	PTY	3								0	0	0	Y	20.8	Y	The ARMgold transaction details explained in the supplimentary note attached		20.8	20.8						Y		
TOTAL					86	6	0	0	0	0	2	93	7	100		26.8				26.8	26.8	0	0	0	0			

The combined lists of organizational shareholders to add up to all HDSA shareholding by non-individuals.

NB: List ESOPS and Community shareholders on separate sheets from other shareholders.

Can list individual shareholders or state summary % and refer to annexure with such details

NB Use as many pages as required or refer to summaries that add up to numbers used.

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TOTAL MEASURED PROCUREMENT SPENT (DISCRETIONARY SPEND)

Expense Item		Actual Rand Value	Last Audited Annual Financial Statement (AFS) to be used Reference	Comments	
1	Cost sales	R 7,311	AFS published for AGA group and will not have detail available to verify SA only. In order to verify the info presented, the quarterly supplementary operational info will be available after the 23rd Feb (USD @ R 10.83). SA Total includes a R 81m of capital spent in the Technology consortium.		
2	Operational expenditure	R 5,936	Available on the internal SOR		
3	Capital expenditure	R 1,106	Available on the internal SOR		
4	Any other, including inter – company expenses (Only if not included in 1,2 or 3 above)				
5	Subtotal	R 8,417			
6	Less Exclusions				
6.1	Less: Taxes, levies, municipality rates	R 98	Available on the internal SOR		
6.2	Less: Public Sector Procurement	R 1,101	Available on the consolidation system		
6.3	Less: Salaries, wages & directors emoluments	R 3,266	Available on the consolidation system		
6.4	Less: Pass- through 3 rd Party Procurement				
6.5	Less: Investments, loans, donations qualifying as Enterprise development and Socio-economic contributions				
6.6	Less: Qualifying Imports				
6.7	Less : Goods and services where there are no local suppliers or manufacturers				
6.8	Less: Goods and services with a different technical specification to those available from local manufacturers				

TOTAL MEASURED PROCUREMENT SPENT (DISCRETIONARY SPEND)

Expense Item		Actual Rand Value	Last Audited Annual Financial Statement (AFS) to be used Reference	Comments
6.9	Less : Goods and services carrying a brand different to that available from local manufacturers			
6.10	Other: Please Specify (Gold in Process, By-Product, Retrenchment, Amortisation, Gold on Hand, Insurance and Industry related charges, Financial accounting adjustment entries)	R 661	Available on the internal SOR and on the consolidation	Financial accounting adjustment includes the differences of controllable (discretionary) spend as reported by Supply Chain from the Finance submission on procurement spend determined from a cost of sales base in the AGA Annual Report. Refer to the Note for the Record "BEE Verification Audit - Difference between DMR reports and Cost of Sales - 29 March 2016"
7 Total Measured Procurement Spend / Discretionary procurement		R 3,291		

EXCLUSIONS

The following are examples of import exclusions:

1	Goods and services where there are no local suppliers or manufacturers	
2	Goods and services carrying a brand different to that available from local manufactures	
3	Goods and services with a different technical specification to those available from local manufacturers	

SUMMARY PROCUREMENT SPENT ON BEE ENTITIES

a) Summary of the procurement spent on BEE entities in terms of capital goods , services and consumables

b) Summary of multi-national-suppliers contribution to social fund

No	Type of Product Procured	Total Procurement from SA Suppliers	Total Procurement from Multinational Suppliers	Total Spent Per Annum	Non-Discretionary Spent	Discretionary Spent	Target 2014	Spent with BEE Entities	
		(R'000)	(R'000)	(R'000)	(R'000)	(R' 000)		(R'000)	
1	Capital Goods	215	-	215	0	215	40%		139
2	Services	2,459	5	2,464	1,255	1,209	70%		938
3	Consumables	1,948	0	1,948	81	1,868	50%		1,177
	Total	4,622	5	4,627	1,336	3,291			2,254
4	Multi-national suppliers contribution to social fund	2010	2011	2012	2013	2014	0.5%		
		Awaiting DMR Guidance	Awaiting DMR Guidance	Awaiting DMR Guidance	Awaiting DMR Guidance	Awaiting DMR Guidance	0.0%		

ENTERPRISE DEVELOPMENT

a) Provide list of initiatives, detailing what the initiative entailed, the beneficiaries and amount spent elaborating more on the impact of the initiative

No	Name of Enterprise	Enterprise Development Initiative		Sustainable Set Asides	Details/Type of Initiative or Programme	Comments
		Monetary R (Rands)	Non-Monetary			
1	MOLALE SECURITY SERVICES CC	11,883			2015 SMART PROCUREMENT WORLD SMME EXPO - 8-10 September 2015- AGA hosted 5 LHC SMME's at the 9th annual Smart Procurement World 2 day conference and exhibition. the expo provided AGA the opportunity to showcase these leading black-owned suppliers to the public and private sector big business.	Cost directly incurred by AGA directly attributable to Supplier Development
2	NORTH REEF PLANT HIRE CC	11,883	Contributions made in the form of human resource capacity - Employees time productively deployed to assist the beneficiary		2015 SMART PROCUREMENT WORLD SMME EXPO - 8-10 September 2015- AGA hosted 5 LHC SMME's at the 9th annual Smart Procurement World 2 day conference and exhibition. the expo provided AGA the opportunity to showcase these leading black-owned suppliers to the public and private sector big business.	Assisted by AGA Metallurgy, Cost directly incurred by AGA directly attributable to Supplier Development
3	MALOMO TRADING AND PROJECT CC	11,883			2015 SMART PROCUREMENT WORLD SMME EXPO - 8-10 September 2015- AGA hosted 5 LHC SMME's at the 9th annual Smart Procurement World 2 day conference and exhibition. the expo provided AGA the opportunity to showcase these leading black-owned suppliers to the public and private sector big business.	Cost directly incurred by AGA directly attributable to Supplier Development
	LETSOGO RECYCLING	11,883			2015 SMART PROCUREMENT WORLD SMME EXPO - 8-10 September 2015- AGA hosted 5 LHC SMME's at the 9th annual Smart Procurement World 2 day conference and exhibition. the expo provided AGA the opportunity to showcase these leading black-owned suppliers to the public and private sector big business.	Cost directly incurred by AGA directly attributable to Supplier Development

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ENTERPRISE DEVELOPMENT

a) Provide list of initiatives, detailing what the initiative entailed, the beneficiaries and amount spent elaborating more on the impact of the initiative

No	Name of Enterprise	Enterprise Development Initiative		Sustainable Set Asides	Details/Type of Initiative or Programme	Comments
		Monetary R (Rands)	Non-Monetary			
5	EXTREME MINING SOLUTIONS CC	11,883			2015 SMART PROCUREMENT WORLD SMME EXPO - 8-10 September 2015- AGA hosted 5 LHC SMME's at the 9th annual Smart Procurement World 2 day conference and exhibition. the expo provided AGA the opportunity to showcase these leading black-owned suppliers to the public and private sector big business.	Cost directly incurred by AGA directly attributable to Supplier Development
6	FLIGHT ONE MINING & CONSTRUCTION		Contributions made in the form of human resource capacity - Employees time productively deployed to assist the beneficiary			The beneficiary received skills development from a vendor in the same service as initiated by the business unit.
7	THANDANAZI PROJECTS (PTY)LTD		Contributions made in the form of human resource capacity - Employees time productively deployed to assist the beneficiary			The beneficiary received mentorship from the properties department.
8	JOHSIN LABOUR RELATIONS - LEGAL CC		Contributions made in the form of human resource capacity - Employees time productively deployed to assist the beneficiary			The beneficiary received mentorship from the properties department.
9	Jeasek Seventy Investments (PTY)LTD		Contributions made in the form of human resource capacity - Employees time productively deployed to assist the beneficiary			The beneficiary received skills development from a vendor in the same service as initiated by the business unit.

ENTERPRISE DEVELOPMENT

a) Provide list of initiatives, detailing what the initiative entailed, the beneficiaries and amount spent elaborating more on the impact of the initiative

No	Name of Enterprise	Enterprise Development Initiative		Sustainable Set Asides	Details/Type of Initiative or Programme	Comments
		Monetary R (Rands)	Non-Monetary			
10	Enterprise Development Centre OR Tambo	3,479,143			Develop SMMEs and meet board based local procurement and associated empowerment targets embedded in the mining charter by establishing an Enterprise Development Centre to identify, train, support and mentor entrepreneurs/existing small	40 Candidates have enrolled for New Venture Creation Program 10 SMMEs are listed in an mentoring programme
11	Daniel Mokehele		1,200		Lease Agreement for office / business at below market value rate	
12	Partners Drilling		71,112		Lease Agreement for office / business at below market value rate	
13	Langa, SP		696		Lease Agreement for office / business at below market value rate	
14	Mokotjo Agnes (Mrs)		84		Lease Agreement for office / business at below market value rate	
15	Copper Sunset Trading 104 (Pty) Ltd		277,764		Lease Agreement for office / business at below market value rate	
16	Sublimor 12 CC		108,624		Lease Agreement for office / business at below market value rate	
17	AngloGold Health Services (Sookhupe) Constance		5,400		Lease Agreement for office / business at below market value rate	
18	Dikeledi Rebecca Zwane		1,320		Lease Agreement for office / business at below market value rate	
19	Fakir RA		1,800		Lease Agreement for office / business at below market value rate	
20	Sublimor 12 CC (TAVERNS)		355,044		Lease Agreement for office / business at below market value rate	
21	Manhique JA t/a Masithandane Tavern		12,636		Lease Agreement for office / business at below market value rate	
22	Molale Security		3,036		Lease Agreement for office / business at below market value rate	

ENTERPRISE DEVELOPMENT

a) Provide list of initiatives, detailing what the initiative entailed, the beneficiaries and amount spent elaborating more on the impact of the initiative

No	Name of Enterprise	Enterprise Development Initiative		Sustainable Set Asides	Details/Type of Initiative or Programme	Comments
		Monetary R (Rands)	Non-Monetary			
23	Abacus Financial Services		67,500		Lease Agreement for office / business at below market value rate	
24	Morgans Hardware (AW/Alli)		3,708		Lease Agreement for office / business at below market value rate	
25	Matlosana Community Agricultural Project	2,527,089			Income Generating Community Farming Project	20 beneficiaries 2ha vegetable farm under shade net
TOTAL						

2014

AS PER MINING CHARTER NOMENCLATURE

Meaningfull Economic participation

Unit	Funding	Type of transaction			Funding- How was the transaction funded?			Funding- Amount Owed (BEE)				Dividends declared		Full share/holder rights (Y/N)			Vesting		Comment
		Share (Y/N)	Asset (Y/N)	Commodity (Y/N)	Debt (Y/N)	Equity (Y/N)	Other (Y/N)	Current (Y/N)	Future (Y/N)	Other (Y/N)	Other (Y/N)	Value of dividends (R)	Value of dividends (R)	Share (Y/N)	Asset (Y/N)	Commodity (Y/N)	Share (Y/N)	Asset (Y/N)	
20.8	N	Y	Y	Y	N	R 2,276,200,200	0	0	0	R 0	0	0	0	N	N	N	Y		The ARM Asset Sales were concluded prior to the promulgation of the MPRDA in 2002 and funded internally by AGA. This transaction, based on the units of production, accounts for 20.8% of AGA's BEE credits as approved in the Converted Mining Rights. ARM was worth R40.5bn as at the end of June 2014 (ARM AFS)
4.5	Y	N	N	Y	N	R 672,384,000	R 0	0	0	R 0	R 0	R 0	R 0	Y	N	Y	Y		The Share subscriptions were internally funded and no debt was incurred by the beneficiaries. This transaction, based on ESOP share scheme arrangement as agreed with the unions and approved by the DMR (as contained in the AGA Mining Rights), accounts for 4.5% of AGA's BEE credits. Cumulative Transaction Value as at the end of 2014 that has flowed through to the beneficiaries by way of shares and dividends was R447,982,025
1.5	Y	N	N	Y	N	R 177,520,000	R 0	0	0	R 0	R 0	R 0	R 0	Y	Y	Y	Y		The Share subscriptions were internally funded and no debt was incurred by the beneficiaries. This transaction, based on share scheme arrangement as agreed with Izingwe Holdings (Pty) LTD and approved by the DMR, accounts for 1.5% of AGA's BEE credits. Cumulative Transaction Value as at the end of 2014 that has flowed through to the beneficiaries by way of shares and dividends was R73,146,587
0																			

26.8

2013

AS PER MINING CHARTER NOMENCLATURE

Meaningfull Economic participation

Unit	Funding	Type of transaction			Funding- How was the transaction funded?			Funding- Amount Owed (BEE)				Dividends declared		Full share/holder rights (Y/N)			Vesting		Comment
		Share (Y/N)	Asset (Y/N)	Commodity (Y/N)	Debt (Y/N)	Equity (Y/N)	Other (Y/N)	Current (Y/N)	Future (Y/N)	Other (Y/N)	Other (Y/N)	Value of dividends (R)	Value of dividends (R)	Share (Y/N)	Asset (Y/N)	Commodity (Y/N)	Share (Y/N)	Asset (Y/N)	
20.8	N	Y	Y	Y	N	R 2,276,200,200	0	0	0	R 384,453,939	N	N	N	N	N	Y			The ARM Asset Sales were concluded prior to the promulgation of the MPRDA in 2002 and funded internally by AGA. This transaction, based on the units of production, accounts for 20.8% of AGA's BEE credits as approved in the Converted Mining Rights. ARM was worth R32.3bn as at the end of June 2013 (ARM AFS). ARM declares it's own dividends independent of AGA
4.5	Y	N	N	Y	N	R 672,384,000	R 0	0	0	R 384,453,939	R 452,442	R 0	Y	N	Y	Y			The Share subscriptions were internally funded and no debt was incurred by the beneficiaries. This transaction, based on ESOP share scheme arrangement as agreed with the unions and approved by the DMR (as contained in the AGA Mining Rights), accounts for 4.5% of AGA's BEE credits. Cumulative Transaction Value as at the end of 2013 that have flowed through to the beneficiaries by way of shares and dividends was R431,789,291
1.5	Y	N	N	Y	N	R 177,520,000	R 0	0	0	R 384,453,939	R 350,000	R 0	Y	Y	Y	Y			The Share subscriptions were internally funded and no debt was incurred by the beneficiaries. This transaction, based on share scheme arrangement as agreed with Izingwe Holdings (Pty) LTD and approved by the DMR, accounts for 1.5% of AGA's BEE credits. Cumulative Transaction Value as at the end of 2013 that have flowed through to the beneficiaries by way of shares and dividends was R59,146,552
0																			

26.8

2012

AS PER MINING CHARTER NOMENCLATURE

Meaningfull Economic participation

Unit	Funding	Type of transaction			Funding- How was the transaction funded?			Funding- Amount Owed (BEE)				Dividends declared		Full share/holder rights (Y/N)			Vesting		Comment
		Share (Y/N)	Asset (Y/N)	Commodity (Y/N)	Debt (Y/N)	Equity (Y/N)	Other (Y/N)	Current (Y/N)	Future (Y/N)	Other (Y/N)	Other (Y/N)	Value of dividends (R)	Value of dividends (R)	Share (Y/N)	Asset (Y/N)	Commodity (Y/N)	Share (Y/N)	Asset (Y/N)	