

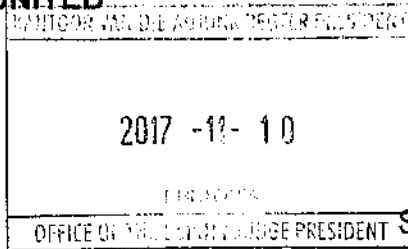
**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No. 71147/17

Application for intervention as parties:

MINING AFFECTED COMMUNITIES UNITED

IN ACTION



First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

MOSEBENZI JOSEPH ZWANE

state under oath that:

1. I am the Minister of Mineral Resources of the Republic of South Africa and was appointed to that post on 23 September 2015. The Minister's office is at building 2C, C/o Meintjes and Francis Baard Street (formerly Schoeman Street), Sunnyside, Pretoria.
2. Unless stated otherwise or the contrary appears from the context, the facts contained in this affidavit fall within my personal knowledge and are to the best of my belief both true and correct.
3. Where I state facts that fall outside my personal knowledge, I attach confirmatory affidavits of those persons who are able to confirm the correctness and the veracity of those facts.
4. Where I make submissions of law, I do so on the advice of my legal advisors.
5. Any allegation that I do not deal with directly in this affidavit is denied.
6. I have read the founding affidavit of Mr Mesheck Mandlenkosi Mbangula ("**Mr Mbangula**") and the supporting affidavits of Ms Gladys Nester Ndebele ("**Ms Ndebele**") and Thelma Thandekile Nkosi ("**Ms Nkosi**") together with the attached documents.
7. For convenience, I retain the acronyms relied on by the Applicant's in paragraphs 1-2 of the founding affidavit to denote their respective organisations, being:

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Mining Affected Communities United in Action ("**MACUA**"), Women from Mining Affected Communities United in Action ("**WAMUA**"), and Mining and Environmental Justice Community Network of South Africa ("**MEJCON**").

8. I note that the relief sought in this application is similar to the relief sought in the intervention application brought by Lawyers for Human Rights ("LHR") in the matter of *Bakgatla ba Sefikile Community and Others v Chamber of Mines of South Africa and Another* (73890/17).

9. This affidavit is structured as follows:

9.1. the relevant background to the *Reviewed Broad-based Black Economic Empowerment Charter for the South African Mining and Minerals Industry* published in Government Gazette No. 40923 on 15 June 2017 ("**2017 Mining Charter**");

9.2. the public participation process;

9.3. meaningful engagement with the Applicants and mining affected communities;

9.4. the 2017 Mining Charter and mining affected communities; and

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- 9.5. opposition to the independent relief that the Applicants seek in the judicial review application brought by the Chamber of Mines against the Minister ("**the Main Application**").
10. Under each of these themes, I also deal with the key allegations made in the founding papers. Finally, I respond *seriatim* to the remaining allegations in the founding papers.

RELEVANT BACKGROUND TO THE 2017 MINING CHARTER

11. I provide an extensive overview in my answering affidavit to the Main Application of the processes which led to the 2004 Mining Charter, the 2010 Mining Charter, the *Assessment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry (Mining Charter) May 2016* ("**2015 Assessment**"), the draft 2017 Charter, and the 2017 Charter. To avoid overburdening the court file, in this answering affidavit I deal only with the information necessary for the purposes of this intervention application.
12. The economic, political and social legacy inherited by the democratic South African government in 1994 was one characterized by the racial exclusion of the majority of South Africans from the mainstream economy. There was, and unfortunately still is, a massive disparity in access to, control over and ownership of resources in the economy, and in the mining industry in particular as described more fully in the answering affidavit to the Chamber's review application.

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13. In this context, Parliament enacted the Mineral and Petroleum Resources Development Act 28 of 2002 ("**MPRDA**" or "**the Act**") as a measure *inter alia* to introduce historically disadvantaged South Africans ("**HDSA**") into the mining industry in an incremental, meaningful and sustainable manner.
14. Following my appointment as the Minister of Mineral Resources on 23 September 2015, I was confronted with requests from various stakeholders for certainty in the relation to the drafting of an amendment to the 2010 Charter. The requests were as a result of uncertainty in the mining industry, and that the South African economy was in recession.
15. In response to this overwhelming request for certainty, in February 2016, I attended my first mining indaba and very explicitly undertook to bring certainty and finality to question of the drafting of a new Charter within a year, taking into account all representations made on the issues. I made this commitment to the entire industry.
16. In about March 2016, a Mining Industry Growth, Development and Employment Task Team ("**MIGDETT**") meeting was held between the relevant stakeholders. The Department of Mineral Resources ("**Department**") presented the content of the draft 2017 Charter at this meeting. In that context, the various stakeholder representatives made their respective submissions. They did not have sight of the content of the draft 2017 Charter before then. It proposed an incremental build-on to the 2010 Charter which in turn incrementally built on the 2004 Charter. Each of the successive charters was based on principles and objectives

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enshrined in the Constitution and the Mineral and Petroleum Resources Development Act 28 of 2002 ("**MPRDA**"). Each charter built incrementally upon its predecessor.

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

THE PUBLIC PARTICIPATION PROCESS

18. In accordance with the Department's long-standing practice, the draft 2017 Charter was published for public comment on 15 April 2016 in Government Gazette No 39933. In the covering notice page, to which the draft 2017 Charter was attached, I invited interested and affected parties to submit written representations on the draft 2017 Charter within 30 days. I further provided that submissions would be received by hand-delivery, email or post. A copy of the covering notice page is attached and marked as annexure "**RA1**".
19. The 30-day comment period, in addition to being a long-standing practice of the Department, reflects section 10 of the MPRDA which requires notice to interested and affected parties to submit comments within 30 days in relation to applications

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for prospecting rights, mining rights, and mining permits. As detailed below, the publication of draft 2017 Charter was only the beginning of what would become a public participation process which lasted for over a year.

20. On 15 April 2016, the Department issued a Media Statement titled "Minister Zwane publishes draft reviewed mining charter for comment" alongside the gazetting of the draft 2017 Charter for public comment. In the statement, the Department stated that:

"The draft reviewed Charter seeks to, inter alia, strengthen the efficacy of the Mining Charter developed in terms of section 100 of the Mineral and Petroleum Resources Development Act, 2002 (Act No 28 of 2002) (MPRDA) as one of the tools for effecting meaningful transformation of the South African mining and minerals industry. The draft reviewed Mining Charter further seeks to integrate Government's transformation policies and legislation in order to enhance the ease of doing business, create regulatory clarity, predictability and certainty."

21. The statement concluded stating that "interested and affected parties are hereby invited to submit written inputs and comments as per the Gazette notice, no later than 31st May 2016." The publication of the draft 2017 Charter for comment appeared widely in many news publications and the draft 2017 Charter was available on many websites, including the Department's. A copy of the media statement is attached and marked as annexure "RA2". It was also published online and is available at: <http://www.dmr.gov.za/publications/summary/292->

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media-statements-2016/8840-media-statement-minister-zwane-publishes-draft-reviewed-mining-charter-for-comment-15-april-2016.html.

22. The Department received just over 60 written representations from various stakeholders in response to its invitation for comments from interested and affected parties on the draft 2017 Charter. A broad summary of those submissions is contained in the attached table marked as annexure "**RA3**". It is clear from the table that the representations received, including from representatives of mining affected communities, were considered by the Department and responded to. In certain instances, representations received were incorporated in the 2017 Charter.
23. In addition to inviting written submissions from any interested and affected parties, which included mining affected communities and individuals, the Department set aside a period of 4 weeks after the deadline for written submissions closed, in order to receive face-to-face follow up representations.
24. Thereafter, for part of June 2016, the entire month of July 2016, and for the early part of August 2016, on a daily basis, the Department conducted face-to-face consultations with individual entities and groups of entities. For illustrative purposes I attach as "**RA4**" a copy of the then itinerary for the limited period of 8 June 2016 until 28 July 2016.
25. For the purposes of this application, the itinerary documents reveal that the Department consulted with just under 50 stakeholders following the closing date

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for representations on the draft 2017 Charter, which included government departments and regulatory bodies, the Chamber of Mines, the National Union of Mine Workers and the Association of Construction and Mining Union, mining companies, law firms, civil society organisations, representatives of mining affected communities, and academics.

26. The deponent to the founding affidavit has made a number of allegations on behalf of MACUA (and the other Applicants) regarding the Minister and Department's failure to consult with the Applicants. These allegations are often framed in general and broad terms without any reference to underlying detail, or fact, or supporting documents. The essence of the claim being made is that communities and organisations representing communities, such as the Applicants, were not consulted. As will be demonstrated below with reference to the indisputable facts and underlying documents, these bald sweeping allegations are incorrect and unsustainable.

27. As described above, the Department had extended a general invitation to any and all interested parties to comment on the draft 2017 Charter. In relation to MACUA, the First Applicant, the Department had gone much further than that. The Department had specifically invited MACUA to make representations on the draft 2017 Charter. The reason for this was because MACUA representatives persistently made unfounded and incorrect allegations about not being included as part of the legislative process in drawing the MPRDA. Mr Mosa Mabuza (the Deputy Director General in the Department), specifically requested the Department to invite MACUA representatives as part of the outreach to

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community organisations and representatives. His confirmatory affidavit is attached. The invitation was extended to MACUA in about early July 2016. The relevant department officials who sent the invitations out are Ms Jeaniffer Ntomi (Assistant Director Mineral Policy Development) and Mr Mukonde Ndou (Assistant Director Mineral Policy Development). Their confirmatory affidavits are attached.

28. MACUA came to the relevant consultation scheduled for 19 July 2016. The MACUA representatives were scheduled to engage the Department for an hour on Tuesday, 19 July 2016 between 14h00 and 15h00 at the Department's offices, within which they were required to make their submissions on the draft 2017 Charter and debate them with Department officials. A copy of the Department's contemporaneous timetable reflecting this is attached as "RA5".
29. The MACUA delegation was in fact given more than the designated hour that they were allotted in order to complete their presentations and debate them with the Department. This was because the approach consistently adopted by the Department in the consultation process was one in terms of which all interested parties were given as much time as required in order to say what they wished to say. The hour long allocated time slot was treated by the Department as a guide and did not act as a limiting factor on parties who sought to make representations. Often, the time periods set out in the itinerary ran over and the Department finished the day's consultations much later. This is because the Department sought to afford every interested party a full opportunity to make complete and meaningful representations.

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30. The MACUA delegation comprised at least ten people. The two speakers on behalf of MACUA were Mr Leslie Hlabane and a Mr Mesheck Mbangula. They identified themselves as such. The MACUA representatives arrived with Action Aid representatives as part of their own delegation. The Department had not extended a specific invitation to Action Aid. The MACUA representatives, on their own accord, elected to share their time with the Action Aid representatives, whom they brought along as part of their own delegation.
31. The sole document that the MACUA representatives spoke to and presented to the Department was its People's Mining Charter. A copy of the document presented to the Department is attached marked "RA6". I point out that this document was presented as a final charter on 19 July 2016. It states in its terms that it was "was adopted on 26 June 2016". However, the deponent to the founding affidavit, Mr Mbangula, states at paragraph 64 that the "People's Mining Charter" was adopted by MACUA "on 26 July 2016". This is a month later, and several days after MACUA's presentation to the Department. I merely highlight the discrepancy: MACUA appears to be relying on two final so-called People's Mining Charters adopted in "Berea" by unnamed communities on two different dates.
32. Mr Nhlanhla Jali, a Deputy Director in the office of the Director General: MMR (at that date, and presently) was present at the meeting on 19 July 2016. As was Mr Sibusiso Kobese and Ms Jeaniffer Ntomi. They confirm what transpired at

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the meeting and the approach of the Department. Their confirmatory affidavits are attached.

33. While the Department has no record of receiving separate written representations from the remaining two Applicants, the Centre for Applied Legal Studies ("**CALS**"), the legal representatives to the Applicants in this application, submitted a written and made an oral representation to the Department arguing, among other things, that a more extensive public participation process be undertaken with mining affected communities (including all of the Applicants whose specific interests were advanced by CALS) and that the 30-day period for public comment was insufficient for mining affected communities.

34. The CALS written representation submitted to the Department is attached marked "**RA7**". It is headed "Comments regarding the draft review BBE Charter for SA Mining and Minerals Industry." It is dated 19 May 2016. The CALS written representations were authored by Mr Robert Crous and Mr Louis Snyman and provided to the Department on 20 July 2016. The CALS oral presentation was made to the Department on 20 July 2016 by Mr Louis Snyman. CALS was afforded a full and proper opportunity to consult on behalf of the communities they represented. A copy of the Department's contemporaneous timetable reflecting CALS' opportunity to make representations on Wednesday, 20 July 2016 between 11h00 and 12h00 is attached as "**RA8**". In response to CALS' submissions, the Department made it clear that it was open to further engagements on the draft 2017 Charter before it was gazetted for implementation.

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35. Mr Nhlanhla Jali, Mr Sibusiso Kobese and Ms Jeaniffer Ntomi were also present at the CALS representations. They confirm what transpired at the meeting on the 20th of July 2016 and the approach of the Department. Their confirmatory affidavits are attached.
36. The Third Applicant also states that it consulted with the Department in July 2016, alongside the Centre for Human Rights.
37. The Department had originally intended to finalise the 2017 Charter and publish it by the end of October 2016. However, there was intense interest in the 2017 Charter. Many persons and entities who had not made written submissions sought to make oral representations, which the Department endeavoured to consider and accommodate.
38. For these reasons, *inter alia*, I took a decision in August 2016 (after conferring with the relevant representatives of the Department) to extend the period for public consultations for several months.
39. During that period, the Department consulted, *inter alia*, with around 22 groups of stakeholders, including with Black Person shareholders, various mining affected communities, traditional leaders, emerging black miners, major commercial and private banks and other major financial institutions (including the Industrial Development Corporation and the Public Investment Corporation). I attach hereto a copy of a document marked as "RA9" and headed "Continued

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Stakeholder Engagements on the Gazetted Draft Reviewed Mining Charter, 2016 - List of Engagements (August 2016 to 21 April 2017)" which was drawn up at the relevant time. It illustrates the comprehensive, intensive and detailed nature of the public participation process that was embarked upon, at my instruction.

40. The Applicants' insinuation that there was no consultation with communities, generally, is also misplaced and incorrect. In the North-West and Limpopo provinces from where the Applicants hail, there was extensive consultation with communities. For example, the Department consulted with about 52 Kgosis and other individuals and entities claiming to represent formal and informal community organisations and interests in the North-West province. I point out that local villagers elect headmen who sit on a tribal council presided over by a Kgosi. The Kgosi's represent the interests of the communities that fall under them. The consultative process was by no means confined to traditional leaders. It was open to and attended by any interested person and organisation. Such consultation occurred on 29 June 2016. It was preceded by local media advertisements and radio announcements in the area inviting interested parties to the consultative process.
41. At least a dozen Department officials were present at the consultation on 26 June 2016, including the following: Ms Bongiwe Mabusela (Director: Empowerment Transactions Assessment), Ms Seipati Dhlamini (Acting Deputy Director General), Mr Nhlanhla Jali, Mr Sibusiso Kobese, Ms Sibongile Malie, Mr Nthokozisi Mtshali (Deputy Director: Mineral Policy Development), Ms Motlatso

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Kobe (Chief Director), Mr Rendani Muthige (Deputy Director: Mineral Policy Development), Mr Mosa Mabuza, Ms Modilati Malapane (Acting Chief Director), and Ms Jeaniffer Ntomi. Their confirmatory affidavits are attached. I was also present. The attendance registers that were filled in on the day, which are by no means complete (since a significant portion of the attendees did not sign), are attached marked as "RA10".

42. Similar consultations with community organisations were held in other parts of the country. I cite another example. On 18 November 2016 the Department held community consultations in the Free State, at the Matjhabeng Local Municipality at the Toronto community hall in Welkom. At least a dozen Department officials were present, including the following: Mr Sibusiso Kobese, Ms Sibongile Malie, Mr Nthokozisi Mtshali (Deputy Director: Mineral Policy Development), Ms Motlatso Kobe (Chief Director), Mr Rendani Muthige (Deputy Director: Mineral Policy Development), Mr Mosa Mabuza, Ms Modilati Malapane (Acting Chief Director), Ms Seipati Dhlamini, Mr Nhlanhla Jali and Ms Jeaniffer Ntomi. Their confirmatory affidavits are attached. There were several community organisations present including the Thabang Concerned Residents Forum, Matjhabeng Municipality representatives and other local municipality representatives, the Mens Forum, the Progressive Black Business Forum and several other different community fora. I attach the attendance registers that were filled in on the day marked as "RA11". These are by no means complete (since a significant portion of the attendees did not sign the register).

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43. The Department officials, overseen by Ms Sibongile Malie, recently (in the week leading up to 9 November 2017) drew up a schedule summarizing some of the community consultations that occurred in 2016. I attach hereto the schedule marked as "RA12". It demonstrates the incorrectness of the allegations of a lack of consultation with mining communities (whether as host communities or affected communities), including communities in the areas from which the Applicants hail.
44. During this extended consultation period, the Department also received further written submissions from, among others, the Chamber of Mines on 19 September 2016, which I detail in my answering affidavit in the Main Application. As I've indicated, this courtesy was extended to all interested and affected parties, including mining communities.
45. In around November 2016, the Department presented its latest thinking on the then evolved draft 2017 Charter to the Parliamentary Portfolio Committee. It had evolved as a result of the Department's public participation process over the preceding months. The parliamentary portfolio committee meeting is an open public hearing.
46. Following the public participation process which commenced on 15 April 2016 with the publication of the draft 2017 Charter for public comment, and included over 11 months of engagements with stakeholders in the mining industry, including mining affected communities, on 15 June 2017 the 2017 Mining Charter was published in the Government Gazette.

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MEANINGFUL ENGAGEMENT WITH THE APPLICANTS AND MINING AFFECTED COMMUNITIES

47. The Applicants do not challenge the extensive public participation process that the Department engaged in for over a year following the gazetting of the draft 2017 Charter, arguing only that the Department failed to “meaningfully engage” with them in the drafting and the finalisation of the 2017 Charter. The Applicants seek to review and set aside the 2017 Charter on procedural grounds.
48. In Part B of the notice of motion, the Applicants seek to, *inter alia*, review and set aside the 2017 Charter “for lack of meaningful engagement in the drafting of the Charter with mining affected communities as key stakeholders”. In their founding papers, the Applicants argue that there was a failure to meaningfully engage with the applicants in the drafting *and the finalisation* of the 2017 Charter (see para 44). Both allegations are denied and, as demonstrated above, are entirely incorrect.
49. As is evident from the table, the itinerary, and the list of engagements detailed above and annexed hereto, the draft Charter published for public comment on 15 April 2016 was not, in any way, final in effect. The draft version of the Charter published for public comment was subject to the extensive public participation process which I detail above. The Department, in finalising the 2017 Charter considered and incorporated oral and written representations from multiple

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stakeholders in the mining industry, including mining affected communities and the Applicants.

50. The founding papers are also unclear as to whether the Applicants contend that the public participation process failed to engage the Applicants "as movements of mining affected communities" (see paras 44 and 65) or mining affected communities specifically (see paras 72, 101, 118 and 131). In either instance, the claim is denied and incorrect. The Department meaningfully engaged directly with the Applicants and their legal representatives and, additionally, the Department meaningfully engaged mining (host and affected) communities, as stakeholders in the mining industry.

51. I refer to the extensive and detailed examples listed above. It is clear from the responses of the Department detailed in the list of engagements that the submissions made by the communities in the consultations were meaningfully considered by representatives of the Department, enabling the communities to learn more about the draft 2017 Charter and have a meaningful say in its development.

52. Further, the Department advised during these community consultations that it recognised mining affected community as stakeholders in the mining industry; it is committed to improving relations with its stakeholders; and that it has an open-door policy, a policy which remains in effect for any mining and mineral related queries or concerns stakeholders may have.

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53. The Department provided meaningful opportunities for public participation processes and, in doing so, took measures to ensure that interested and affected persons were given a meaningful opportunity to be heard and their views considered. As detailed above, the Department did this to ensure the participatory nature of the drafting process of the 2017 Charter.
54. The Department, in the circumstances, took reasonable steps to ensure that all stakeholders were afforded the opportunity to engage in this process. It consulted with the First and the Third Applicant on the Applicants' own version. The consultations were meaningful and considered by the Department.

THE 2017 MINING CHARTER AND MINING AFFECTED COMMUNITIES

55. The Applicant's do not support the case of the Chamber of Mines in the Main Application (at paras 19 and 77). On multiple occasions they acknowledge the important provisions that the 2017 Charter extends to mining affected communities. These include, but are not limited to:

- 55.1. The 2017 Charter "has been drafted as a document with a number of provisions for the benefit of communities. The Charter has catered for mine communities and defines a mine community as a community where mining takes place, major labour sending areas, as well as adjacent communities within a local municipality, metropolitan municipality and/or district municipality (at para 89)."

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- 55.2. "The preamble of the 2017 Mining Charter acknowledges that although the MPRDA has transferred the ownership of mineral wealth of the country to all the people in South Africa, under the custodianship of the state a proliferation of communities living in abject poverty continues to be a large characteristic of the surroundings of mining operations (at para 90)."
- 55.3. "In its objectives, the Mining Charter undertakes to ensure the enhancement of social and economic welfare of Mine Communities and major labour sending areas in order to achieve social cohesion (at para 91)."
- 55.4. "The Mining Charter has further made provision for 8% of total shares by the mining right holder to be held in the form of a community trust managed by an agency called the Mining Transformation and Development Agency ("MTDA") (at para 92)."
- 55.5. Increases in the shareholding of Black Persons (at para 69.6)
56. In this light, and as a result of the extensive public participation process that I detail above, it is clear that the Applicants were consulted and had a reasonable opportunity to engage in the process. It is clear further that the 2017 Charter, on the Applicants' own version seeks, to better the lives of HDSAs, including those living in mining affected communities, in an incremental, meaningful and sustainable manner.

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OPPOSITION TO THE RELIEF THAT THE APPLICANTS SEEK IN THE MAIN APPLICATION

57. As indicated by my attorney in correspondence to the Judge President and the Deputy Judge President dated 12 October 2017 and attached to the founding papers as annexure "RA13", I abide by the decision of the court only insofar as the Applicants seek leave to intervene in relation to Part A of this application.
58. In terms of Part B of this application, which seeks to review and set aside the 2017 Charter as a result of a lack of meaningful engagement in the drafting of the 2017 Charter with mining affected communities as key stakeholders, the application should to be dismissed, with no order to costs. The applicants have failed to make out a proper case for the reviewing and setting aside of the 2017 Charter.
59. Within the discretion of the Court, I do not oppose the declaratory relief that the Applicants seek in paragraph 4 of the notice of motion but I take the view that it is unnecessary given that the Department already views mining affected communities as stakeholders in the mining industry.

**SERIATIM: ANSWERING AFFIDAVIT OF MESHACK MANDLENKOSI MBANGULA
AD PARAS 1-4**

60. The allegations in these paragraphs are noted.

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AD PARAS 5-8

61. The allegations in these paragraphs are noted.

AD PARAS 8-9

62. The allegations in these paragraphs are admitted.

AD PARA 10

63. The allegations in this paragraph is noted, save that the application to this matter of section 6 of the Promotion of Administrative Justice Act 3 of 2000 ("**PAJA**"), and PAJA in general, is denied. Further arguments in this regard will be raised by my legal representatives in argument before this court.

AD PARA 11

64. The allegations in this paragraph are noted.

AD PARAS 12-17

65. The allegations in these paragraphs are admitted insofar as they are recorded in the correspondence between the parties.

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AD PARAS 18-26

66. The allegations in these paragraphs are noted, save that the allegations in para 24 are admitted.

AD PARAS 27-40

67. At the meeting with the Deputy Judge President on 20 October 2017, he noted that the parties could not reach agreement.

68. CALS and LHR indicated that they wished to bring self-standing review applications, and in order to accommodate them, the timetable for the ventilation of the Chamber's review application ought to be revised.

69. The Chamber and the Minister disagreed. They contended that the timetable had been agreed per Directive of the Judge President. Furthermore, they pointed out that the intervening parties knew from at least June 2017 that this dispute was pending in court, and that the intervening cannot hold the agreed timetable and the court process to ransom merely to accommodate their convenience.

70. My legal representatives repeated the stance that the Department and I have held since inception: namely, that all interested parties should be allowed to contribute to the debate, but that this should in no way throw the agreed timetable out of kilter.

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71. The Deputy Judge President ruled firstly that the timetable in terms of which this hearing was to occur on 13 and 14 December was effectively cast in stone by Directive of the Judge President and was not to be disturbed, and secondly that CALS and the LHR were at liberty to approach the urgent court should they so wish, with any self-standing review application and/or any intervention application.

72. I note that the intervening application does not in any way seek to throw the agreed timetable and the proposed hearing dates out of kilter.

73. I attach a confirmatory affidavit of my instructing attorney, Mr Goitse Pilane, who was present at the meeting and who confirms the above.

74. Save as aforesaid, the allegations in these paragraphs are noted.

AD PARA 41

75. The allegations in this paragraph are admitted.

AD PARA 42-43

76. The allegations in these paragraphs noted.

AD PARA 44

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77. As detailed above, the Department engaged in a meaningful, comprehensive, intensive and detailed public participation process for over a one-year period which included stakeholders in the mining industry, including mining affected communities such as the Applicants.
78. The alleged failure of the Department to meaningfully engage the Applicants is factually and legally incorrect. I note that the Applicants make no further arguments relating to section 24 of the Constitution – which is mentioned in bald and fleeting terms – in the founding papers.
79. As stated above, I deny that PAJA applies to this matter.
80. Save as aforesaid, the allegations in this paragraph are denied.

AD PARAS 45-47

81. The allegations in these paragraphs are noted.

AD PARAS 48-64

82. The Mining Lekgotla is not a state function or state initiative, although the Department does participate therein. To the best of my knowledge, the Department and the Minister had no role in, or knowledge of, the alleged exclusion of MACUA representatives.

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83. The consultative process in relation to any amendments to the MPRDA would have run their ordinary course, that applies to the promulgation of any legislation. The First Applicant necessarily would have had the opportunity to engage the prescribed legislative consultative processes in that regard.
84. The contradictory allegations regarding the so-called People's Mining Charter, adopted by an unnamed group of persons in relation to unidentified communities on an unclear date in "Berea" has been dealt with above.
85. Save as aforesaid, the allegations in these paragraphs are noted.

AD PARA 65

86. The allegations in this paragraph are denied. As I have detailed above, there was an extensive public participation process which included the Applicants. The claim that there was no consultation is clearly misleading and incorrect.

AD PARA 66

87. The allegations in this paragraph are noted. I note further that the Applicants at para 91 of the founding papers support the 2017 Charter stating: "In its objectives, the Mining Charter undertakes to ensure the enhancement of social and economic welfare of Mine Communities and major labour sending areas in order to achieve social cohesion".

MR M. J. Z

AD PARA 67

88. These allegations have been dealt with above.

89. I admit that the draft 2017 Charter was published on 15 April 2017.

90. I deny that the draft 2017 Charter was not published on another accessible forum and that MACUA and the Second and Third Applicant could not access the draft 2017 Charter.

91. I note that the Applicants only became aware of the draft 2017 Charter through Action Aid.

92. Save as aforesaid these allegations are denied.

AD PARA 68

93. The allegations in this paragraph are denied. The draft 2017 Charter was publicly accessible.

AD PARAS 69-74

94. The allegations in these paragraphs have been dealt with above.

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95. As described above, the Department specifically consulted with the Applicants and their legal advisors and communities in general.
96. I note that on MACUA's own version, it did not advise the Second and Third Applicants of its meeting with the Department.
97. I deny that MACAU was at the mercy of other participants. While I note that MACUA's submissions focused on deficiencies in the public participation process with respect to community participation, the claim is denied.
98. I deny that the Department only makes itself available to mining companies and only approaches communities to seek people's votes.
99. As I have detailed above, in finalising the 2017 Charter the Department considered and incorporated oral and written representations from multiple stakeholders in the mining industry, including mining affected and host communities and the Applicants.
100. As I have detailed above, I deny that the Department did not meaningfully engage with stakeholders in the mining industry, including mining affected and host communities.
101. I admit that the 2017 Charter was gazetted on 15 June 2017.
102. Save as aforesaid, the allegations in these paragraphs are denied.

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AD PARAS 76-79

103. The allegations in these paragraphs are noted.

AD PARAS 80-88

104. The letter described in para 86 was sent. The roll-over to the 15th of December was a request made to the DJP. If that request cannot be accomodated, any intervening parties or amicus curiae might be restricted to making only written submissions.

105. I note that these paragraphs are an exact copy of paras 18-26 of the founding papers.

106. Save as aforesaid, the allegations in these paragraphs are noted.

PARAS 89-100

107. The allegations in these paragraphs are noted, particularly the support expressed by the Applicants for the 2017 Charter.

PARA 101

108. The allegations in this paragraph are denied.

mk M.J.Z

109. As I have detailed above, the Department engaged in an extensive public participation process. In finalising the 2017 Charter, the Department considered and incorporated oral and written representations from multiple stakeholders in the mining industry, including mining affected and host communities and the Applicants and their legal representatives.

110. The Department throughout its public participation process endeavoured to create a space for mutual understanding and the reaching of resolutions to mitigate differences with stakeholders in the mining industry, including mining affected communities.

AD PARA 102

111. The allegations in this paragraph are noted.

AD PARA 103

112. The allegations in this paragraph are noted.

AD PARAS 104-110

113. I am advised that these paragraphs deal primarily with questions of law and, if necessary, will be dealt with in argument by my legal representatives.

mlc M. J. Z

114. However, I note the admission in para 108.2 that the Applicants were invited to consultative meetings during the pre-drafting process.

AD PARAS 111-117

115. I am advised that these paragraphs deal primarily with questions of law and, if necessary, will be dealt with in argument by my legal representatives.

116. I expressly deny that the Department failed to meaningfully consult.

117. As set out above, I repeat that the Department engaged in extensive consultations, including with the Applicants and their legal representatives and with mining (affected and host) communities.

AD PARA 118

118. I expressly deny that the Department failed to meaningfully consult.

119. As set out above, I repeat that the Department engaged in extensive consultations, including with the Applicants and their legal representatives and with mining (affected and host) communities.

120. Save as aforesaid the allegations in this paragraph are denied.

mk 11.5.2

AD PARAS 119-123

121. I am advised that these paragraphs deal primarily with questions of law and, if necessary, will be dealt with in argument by my legal representatives.

122. I expressly deny that the Department failed to meaningfully consult.

123. As set out above, I repeat that the Department engaged in extensive consultations, including with the Applicants and their legal representatives and with mining (affected and host) communities.

AD PARAS 124-130

124. I am advised that these paragraphs deal primarily with questions of law and, if necessary, will be dealt with in argument by my legal representatives.

AD PARAS 131-133

125. These allegations have been dealt with above.

126. Save as aforesaid, the allegations in these paragraphs are denied.

AD PARAS 134-135

MK 11/15/2

127. I am advised that these paragraphs deal primarily with questions of law and, if necessary, will be dealt with in argument by my legal representatives.

AD PARA 136

128. I deny that I did not engage with stakeholders in the mining industry, including mining affected and host communities.

129. I expressly deny that the Department failed to meaningfully consult.

130. As set out above, I repeat that the Department engaged in extensive consultations, including with the Applicants and their legal representatives and with mining (affected and host) communities.

131. Save as aforesaid the allegations in this paragraph are denied.

AD PARA 137-138

132. I am advised that these paragraphs deal primarily with questions of law and, if necessary, will be dealt with in argument by my legal representatives.

133. I deny that I did not engage with stakeholders in the mining industry, including mining affected and host communities.

MR M52

134. I expressly deny that the Department failed to meaningfully consult.

135. As set out above, I repeat that the Department engaged in extensive consultations, including with the Applicants and their legal representatives and with mining (affected and host) communities.

136. Save as aforesaid the allegations in this paragraph are denied.

AD PARA 139

137. I deny that the Department failed to engage to the Applicants in the preparation of the 2017 Charter. I admit that mining affected communities are stakeholders in the mining industry.

138. I am advised that the question of remedy will be dealt with in argument by my legal representatives, save to note that the extensive public participation process which the I've detailed above has cost and time implications. Further delays in implementation of the 2017 Charter also impede the 2017 Charter's transformation agenda and the implementation of provisions that benefit mining affected communities.

139. Save as aforesaid the allegations in this paragraph are denied.

AD PARAS 140-141

mk M J 2

140. I am advised that these paragraphs deal primarily with questions of law and, if necessary, will be dealt with in argument by my legal representatives.

AD PARA 142

141. I expressly deny that the Department failed to meaningfully consult.

142. As set out above, I repeat that the Department engaged in extensive consultations, including with the Applicants and their legal representatives and with mining (affected and host) communities.

143. Save as aforesaid the allegations in this paragraph are noted.

AD PARAS 143-145

144. I deny that the Applicants were excluded from the public participation process.

145. As detailed above, I abide by the decision of the court to admit the Applicants as intervening parties in relation to Part A of this application. Part B of this application should to be dismissed, with no order to costs, as the applicants have failed to make out a proper case for the reviewing and setting aside of the 2017 Charter.

146. There is no need for the declaratory relief that the Applicants seek in paragraph 4 of the notice of motion.

mk M52

147. Save as aforesaid, the allegations in these paragraphs are noted.

SERIATIM: SUPPORTING AFFIDAVIT OF GLADYS NESTER NDEBELE

AD PARAS 1-3

148. The allegations in these paragraphs are noted.

AD PARA 4

149. The allegations in this paragraph are denied inasmuch as they relate to a lack of engagement by the Department in the preparation of the 2017 Charter, which I have dealt with above.

AD PARA 9-17

150. It is noted that WAMUA alleges that it only became aware of the 2017 Charter in July 2017. This is despite the Department meeting with MACUA (what appears to be an umbrella body that hosts WAMUA) and despite the Department meeting CALS (the legal representative of all the applicants who advanced the interests of all the applicants including WAMUA), a year earlier on 19 July 2016.

151. Save as aforesaid, the allegations in these paragraphs are noted.

MR MJSZ

AD PARA 18

152. As I have detailed above, the draft 2017 Charter was not final in effect and was subject to an extensive public participation process with stakeholders in the mining industry, including mining affected communities, before it was finalised and gazetted for implementation on 15 June 2017.

153. As I have detailed above, mining affected communities, and organisations such as MACUA and the other applicants, were consulted during the preparation of the 2017 Charter.

154. Save as aforesaid, the allegations in this paragraph denied.

AD PARA 19

155. I expressly deny that the Department failed to meaningfully consult.

156. As set out above, I repeat that the Department engaged in extensive consultations, including with the Applicants and their legal representatives and with mining (affected and host) communities.

157. Save as aforesaid the allegations in this paragraph are noted.

AD PARAS 20-22

mk M52

158. I expressly deny that the Department failed to meaningfully consult.

159. As set out above, I repeat that the Department engaged in extensive consultations, including with the Applicants and their legal representatives and with mining (affected and host) communities.

160. Save as aforesaid the allegations in this paragraph are noted.

AD PARAS 23-27

161. The allegations in these paragraphs are noted. The Department endeavours, as detailed above, to ensure that all stakeholders in the mining industry are meaningfully consulted.

SERIATIM: SUPPORTING AFFIDAVIT OF THELMA THANDEKILE NKOSI

AD PARAS 1-4

162. The allegations in these paragraphs are noted.

AD PARAS 5-8

163. The allegations in these paragraphs are noted.

AD PARAS 9-12

MR M. J. Z

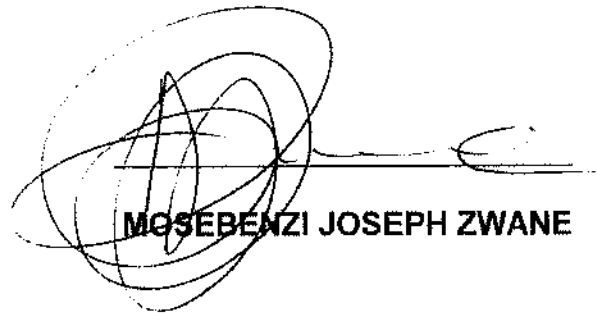
164. The allegations in these paragraphs are noted, particularly that MEJCON engaged in the extensive participatory process which I have detailed above.

AD PARAS 13-15

165. I expressly deny that the Department failed to meaningfully consult.

166. As set out above, I repeat that the Department engaged in extensive consultations, including with the Applicants and their legal representatives and with mining (affected and host) communities.

167. Save as aforesaid the allegations in this paragraph are noted.



MOSEBENZI JOSEPH ZWANE

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on 10th November 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

mk MJSZ



Commissioner of Oaths

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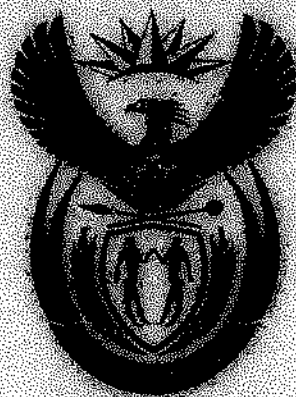
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Government Printing Works has over the last few months implemented rules for completing and submitting the electronic Adobe Forms when you, the customer, submit your notice request.

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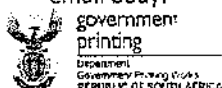
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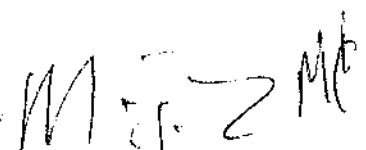


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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF MINERAL RESOURCES

NO. 450

15 APRIL 2016

**REVIEWED BROAD BASED BLACK-ECONOMIC EMPOWERMENT
CHARTER FOR THE SOUTH AFRICAN MINING AND MINERALS
INDUSTRY, 2016.****PUBLICATION OF AND INVITATION TO COMMENT ON THE DRAFT
REVIEWED BROAD BASED BLACK-ECONOMIC EMPOWERMENT
CHARTER FOR THE SOUTH AFRICAN MINING AND MINERALS
INDUSTRY, 2016.**

I, **Mosebenzi Joseph Zwane, MP**, Minister of Mineral Resources, hereby publish the draft Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2016 (draft Reviewed Mining Charter) for public comments.

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

70 Mentjies street
Trevenna Campus
Sunnyside
0007.

Private Bag x59
Arcadia
0001.
or

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

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



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

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

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PREAMBLE

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

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

In 2009, consistent with this provision, the Department conducted a comprehensive assessment to ascertain the progress of transformation of the industry against the objectives of the Charter in the mining industry. The findings of the assessment identified a number of shortcomings in the manner in which the mining industry has implemented the various elements of the Charter, viz. ownership, procurement, employment equity, beneficiation, human resource development, mine community development, housing and living conditions, all of which had not embraced the spirit of the Charter to the letter. To overcome these inadequacies, amendments were made to the Mining Charter of 2002 in order to streamline and expedite attainment of its

objectives. Additionally, the review of the Charter introduced an element of sustainable growth of the mining industry, which sought to ensure sustainable transformation and growth of the mining industry.

As of 2014, the Mining Charter had been in force for a decade. This served as the opportune time to conduct a second assessment of levels of compliance by mining companies with the Amended Charter of 2010. This second assessment has revealed the following.

- Although there was a noticeable improvement in levels of compliance, there still remains a long way for the mining industry to be fully transformed
- Notwithstanding a paucity of companies of all sizes that have fully embraced the spirit of the Mining Charter, there's an extremely varied performance that seems to suggest a compliance-driven mode of implementation, designed only to protect the "social license to operate".
- Whereas the MPRDA has transferred the ownership of the mineral wealth of our country to all the people of South Africa, under the custodianship of the State, a proliferation of communities living in abject poverty continues to be largely characteristic of the surroundings of mining operations.
- Limited progress has been made in embracing the broad-based empowerment ownership in terms of meaningful economic participation of Black South Africans. The trickle flow of benefits that ought not only to service the loan, but also include cash-flow directly to BEE partners, is vastly limited. To this end, the interests of mineworkers and communities are typically held in nebulously defined Trusts, which constrain the flow of benefits to intended beneficiaries. As a result, the mining industry has broadly been faced with increasing tensions with both workers and host communities.

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

The review process takes into account the need to align and integrate Government policies to remove ambiguities in respect of interpretation and create regulatory certainty. In this regard the reviewed Mining Charter is aligned to the provisions of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) and the Codes of Good Practice (DTI Codes).

The reviewed Mining Charter introduces new definitions, terms and targets to effect alignment of the Mining Charter with the BBBEE Act and the DTI Codes. The alignment of these policies intended to ensure meaningful participation of black people as per the objects of the MPRDA and the mining charter and provide for policy and regulatory certainty sought to invest in the development of the industry.

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VISION

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

MISSION

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

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DEFINITIONS

Government has identified a need to align and integrate the transformation regulatory framework in order to remove ambiguities in respect of interpretation and bring about regulatory certainty. In this regard the definitions of the terms BEE entity, Broad Based Socio-Economic Empowerment, Effective ownership, Black people and Shareholder are aligned with the provisions of the BBBEE Act and the Dti Codes.

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

"Broad-Based Black Economic Empowerment" means the viable economic empowerment of all black people, in particular women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to-

- (a) Increasing the number of black people that manage, own and control enterprises and productive assets;
- (b) Facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;
- (c) human resource and skills development;
- (d) achieving equitable representation in all occupational categories and levels in the workforce;
- (e) preferential procurement from enterprises that are owned or managed by black people, and
- (f) investment in enterprises that are owned or managed by black people;

"Beneficiation" means beneficiation as defined in the MPRDA;

"BEE compliant company" in relation to the procurement element means a company that complies with the Broad-Based Black Economic Empowerment Act 2003 (Act No. 53 of 2003) and the Codes of Good Practice (DTI Codes).

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

- (a) Who are citizens of the Republic of South Africa by birth or descent; or
- (b) Who became citizens of the Republic of South Africa by naturalisation:
 - (i) before 27 April 1994; or
 - (ii) On or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date:

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

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

"Core skills and critical skills" means skills which are a basis for a competitive edge for an organization, such as mining engineers, mechanical engineers, electrical engineers, metallurgical engineers, chemical engineers and artisans;

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

"ESOPs" means Employees Share Ownership Scheme.

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

"Level of management" refers to line of demarcation between various managerial positions;

"Locally manufactured goods" refers to goods manufactured within the Republic of South Africa.

"Locally based companies" refers to companies that are domiciled within the Republic of South Africa.

"Life of Mine" means the number of years that a particular mine will be operational;

"Meaningful economic participation" includes, inter alia, the following key attributes:

BEE transactions shall be concluded with clearly identifiable partners in the form of BEE entrepreneurs, workers (including ESOPs) and communities.

Some of the dividends should flow to the BEE partner throughout the term of the investment, and for this purpose, stakeholders must engage the financing entities in order to structure the BEE financing in a manner where a percentage of the cash-flow is used to service the funding of the structure, while the remaining amount is paid to the BEE partners. Accordingly, BEE entities are enabled to leverage equity henceforth in proportion to vested interest over the life of the transaction in order to facilitate sustainable growth of BEE partners;

- BEE partners shall have full shareholder rights such as being entitled to full participation at annual general meetings and exercising of voting rights, regardless of the legal form of the instrument used;
- Ownership shall vest within the timeframes agreed with the BEE;

"Mine Community" refers to communities where mining takes place and labour sending areas;

"Mining Charter" means the broad-based black-economic empowerment Charter for the South African Mining and Mineral Industry;

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"Ministerial Skills Development Trust Fund" refers to a trust fund established by the Minister for essential skills development activities such as artisanal, bursaries, literacy and numeracy and reflective of the proportional representation, but excluding the mandatory skills levy;

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

"Social Development Trust" refers to a social development fund established by the Minister towards socio-economic development of local communities, capacity building for black suppliers of goods (Capital and Consumable) and services.

"Shareholder" means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated securities register and/or a person who is entitled to exercise any voting rights in relation to a company, irrespective of the form, title or nature of the securities to which those voting rights are attached;

"Small business" means small business as defined in the National Small Business Act, 1996 (Act No. 102 of 1996).

"Stakeholder" refers to a person, group, organisation, or system which affects or can be affected by an organisation's actions which may relate to policies intended to allow the aforementioned to participate in the decision making in which all may have a stake.

PART A

1. OBJECTIVES OF MINING CHARTER

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 meaningful transformation of the mining industry. The Mining Charter seeks to achieve the following objectives:

- (a) Promote equitable access to the nation's mineral resources to all the people of South Africa;
- (b) 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;
- (c) Utilise and expand the existing skills base for the empowerment of black people and to serve the community;
- (d) Promote employment and advance the social and economic welfare of mine communities and major labour sending areas;
- (e) Promote beneficiation of South Africa's mineral commodities

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2. ELEMENTS OF THE MINING CHARTER

2.1 OWNERSHIP

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

- (a) Achieve a minimum target of 26% ownership per mining right 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);
- (b) The 26% stake shall be allocated in not less than a minimum of 5% shares equitably distributed amongst workers (in the form of ESOPS), black entrepreneurs and the community respectively.
- (c) The aforementioned minimum community participation and workers stake shall be held in Trusts created by the community and the workers respectively and registered with the Master of the High Court with jurisdiction.
- (d) The trusts must be constituted in terms of the Trust Property Control Act, 57 of 1988 (Act No. 57 of 1988) as amended and report to the South Africa Revenue Services and the Department of Mineral Resources.
- (e) A community and workers trust must include representation from the traditional authorities and unions respectively.
- (f) Shareholders of the black empowerment stake must create Special Purpose Vehicle (SPV) to manage the 26% black economic empowerment stake.
- (g) Each empowerment transaction must register an SPV.
- (h) There must be a BBBEE transaction for each mining right granted and one SPV for each empowerment transaction.

- (i) The mining right holders must, with the concurrence of the BEE partners, consolidate the empowerment transactions with the prior written consent of the Minister.
- (j) The afore mentioned SPV must register its own Memorandum of Incorporation (MOI) to regulate the black economic participation stake amongst the black workers, black entrepreneurs and the community, consistent with relevant provisions of the Companies Act.
- (k) The MOI for the SPV must address the following issues.
 - (i) appointment of joint representative;
 - (ii) allocation of voting rights in respect of both the special and ordinary resolutions;
 - (iii) dispute resolution mechanism; and
 - (iv) any other matter prescribed by the Companies Act

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

All existing mining right holders must align BEE transaction(s) concluded prior to the coming into operation of the amended mining charter 2010 with the reviewed mining Charter 2016. Where a BEE partner or partners have exited, BEE contract has lapsed or the previous BEE partner has transferred shares to a non-BEE company, the mining right holder must within the three years transitional period from the date of publication of the Charter review its empowerment credentials consistent with the amended 2016 mining Charter

2.2 PROCUREMENT, SUPPLIER AND ENTERPRISE DEVELOPMENT

Enterprise development and local procurement are one of the key instruments to achieve both competitiveness and transformation of the mining industry. It also presents opportunities to expand economic growth that allows for the creation of decent jobs and widens scope for market access of South African capital goods, consumer goods and services.

To achieve this, a mining right holder must ensure that procurement policies and actual procurement is aligned to the following:

Capital goods

- (a) A mining right holder must procure a minimum of 60% locally manufactured capital goods from BEE compliant manufacturing companies
- (b) 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.

Consumables

- (a) A mining right holder must procure a minimum of 70% of locally manufactured consumables from BEE compliant manufacturing companies.
- (b) A minimum of 30% of the 70% must 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.

Services

- (a) A Mining right holder must procure a minimum of 80% services from BEE compliant and locally based companies.

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- (b) A minimum of 40% of the 80% must be given to small business development which are BEE compliant, a minimum of 10% of the 40% must be reserved for BEE compliant enterprise development.
- (c) Mining right holders must utilise South African based facilities for the analysis of 100% of each company's mineral samples across the mining value chain. A mining right holder may not conduct sample analyses using foreign based facilities without the prior written consent of the Minister.

Mining right holders shall before submitting the annual mining charter report to the Department verify local content for capital and consumer goods as provided for above with the South African Bureau of Standards (SABS); and

Multinational supplier of goods must annually 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 Consumable) and services into a Social Development Trust Fund established by the Minister for that purpose.

The trustees of the Social Development Trust shall include stakeholders from organised business, organised labour and Government.

2.3 BENEFICIATION

The Government policy on mineral beneficiation seeks to leverage the country's comparative advantage in mineral resource wealth to be a fulcrum for industrialisation by strengthening the linkages between mining and manufacturing. Whilst other elements of this Charter will strengthen side stream linkages between mining and manufacturing (e.g. procurement, Human resource development etc.), this element will strengthen the downstream linkages.

In this regard, the Mining Charter provides for a mechanism for companies to offset up to 11 percentage of the 26% of the ownership reserved for black people.

2.4 EMPLOYMENT EQUITY

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

Consistent with the EE Act, workplace diversity and equitable representation at all levels are catalysts for social cohesion, transformation and competitiveness of the mining industry. In order to create a conducive environment to ensure diversity as well as participation of black people at all decision-making positions and core occupational categories in the mining industry, every mining company must achieve a minimum threshold of black people representation as follows:

Executive Management (Board)

- (a) A minimum of 50% Black people with exercisable voting rights and proportionally representative, 15% of which must be black females in line employment active population (EAP).
- (b) A minimum of 50% Black people proportional represented at the executive directors' level as a percentage of all executive directors of which 25% must be black female in line with the employment active population.

Senior Management (EXCO)

- (a) A minimum of 60% Black Employees in Senior Management as a proportional representative percentage of all Senior Management of which 30% is black females in line with the employment active population.

Middle Management level

- (a) A minimum of 75% of Black employees in Middle Management as a proportional representative percentage of all middle Management of which 38% is black females employees in that category in line with the employment active population.

Junior Management level

- (a) 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 employment active population (EAP).

Employees with disabilities

- (a) 2% of Black employees with disabilities as a percentage of all employees.

Core and Critical skills

Mining right holders must ensure that a minimum of 40% Black people are represented in the mining company's core and critical skills by diversifying their existing pools. To achieve this, the right holder must:

- (a) Identify and fast track their existing pools for core and critical skills.
- (b) The abovementioned fast tracking of pools must be a proportional representation of the workforce.

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2.5 HUMAN RESOURCE DEVELOPMENT

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

- (a) Invest 5% of annual payroll essential skills development activities such as artisanal, bursaries, literacy and numeracy and reflective of the proportional representation, but excluding the mandatory skills levy;
- (b) The 5% annual payroll for skills development shall include support for South African based academic institutions, research and development initiatives intended to develop solutions in exploration, mining, processing, technology efficiency (energy and water use in mining), beneficiation as well as environmental conservation and rehabilitation
- (c) 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.

2.6 MINE COMMUNITY DEVELOPMENT

Mine communities form an integral part of mining development, there must therefore be a balance between mining development and mine community socio-economic development. Mining companies must meaningful contribute towards community development, both in terms of size and impact, in keeping with the principles of the social license to operate. Stakeholders must adhere to the following:

Meaningful consultation and co-ordination between mining companies, communities and local municipalities is a critical element in ensuring mine community development. Consistent with international best practices mining companies must therefore:

- (a) Annually contribute a minimum of 1% of annual turnover towards local community development and labour sending areas.

2.7 HOUSING AND LIVING CONDITIONS

Human dignity and privacy for mineworkers are still the hallmarks to enhance productivity and expedite transformation in the mining industry in terms of housing and living conditions. In this regard mining companies' must improve the standards of housing and living conditions for mine workers in line with the Housing and Living Conditions Standards for the Minerals Industry, as follows:

- (a) Maintain the occupancy rate of one person per unit and maintain family units.
- (b) Contribute towards home ownership options for interested mine employees in consultation with organised labour.

The contribution for home ownership options include but not limited to the following:

- (a) mining companies offering different building packages to interested employees;
- (b) subsidising such workers to buy houses;
- (c) mining companies partnering with finance institutions to issue guarantees for home ownership on behalf of the mine employees;
- (d) Mining companies must ensure that where the 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.

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PART B

2.8 APPLICATION OF THE MINING CHARTER FOR PERMITS/LICENCES GRANTED UNDER THE PRECIOUS METALS ACT, 2005, AND THE DIAMONDS ACT, 1986, AS AMENDED.

The Diamonds Act 1986 and the Precious Metals Act, 2005 make provision for the South African Diamonds and Precious Metals Regulator to have regard to the requirements of the Mining Charter when considering applications lodged in terms of these Acts.

The Mining charter shall therefore, apply to the industries administered under these Acts as follows:

CATEGORY	METAL USAGE IN KG/ANNUM	EXEMPT FROM THE FOLLOWING TARGETS	REQUIRED TO COMPLY WITH THE FOLLOWING TARGETS
Exempted Micro Enterprises (including students)	1.5 kg / annum Estimated max turnover Less than R1 million	Ownership Human Resource Development Procurement Employment equity Community development	N/A
Qualifying Small Enterprises	Between 1.5 kg and 5 kg/annum Estimated max turnover R1 million to 3.8 million	Ownership Community development	Procurement Employment equity Human resource development



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

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Media Statement

To all media

15 April 2016

Minister Zwane publishes draft reviewed mining charter for comment

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

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

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

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

Ends –

Issued by the Department of Mineral Resources

MR M.S.Z

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

JUNE 2016

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

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	that the above problem needs to be resolved by amendments to the MPRDA itself and not the Charter.		review the Charter as contemplated in section 100. The powers review and amend the Charter are implicit the powers conferred to the Minister to Develop the Charter in terms of the Act.
iii.	The Reviewed Charter imports definitions from the BBBEE Act which are out of alignment with the definitions in the MPRDA this may create interpretation challenges.		Refer to point I above.
iv.	The Chamber is concerned that the DMIR does not provide clarity on when the Mining Charter can be used for purposes of granting mining rights as well as when it can be used for commercial purposes in the economy. The Reviewed Mining Charter creates confusion by introducing BEE Codes assessment ratings for compliance purposes when the Mining Charter score card itself is not properly aligned to that of the Codes. For purposes of the Mining Charter it would be ideal to clearly state how the regulator will apply the provisions of the MPRDA when some or all of the elements of the ring-fenced elements are not met.		The department notes the concerns on misalignment of the Charter Score Card and the Dtl. Codes, the principles of alignment of the Charter and Dtl Codes do not apply to content/measures but confined to definition of terms and concepts... The Department will secure the requisite deviation approval from Dtl as contemplated in section 10 of the BBBEE Act where necessary. Noncompliance with any ring-fenced element/s amounts to noncompliance and

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			the provisions of sections 93, 47, 98 and 99 of the MPRDA will be invoked.
			- The Department will further improve on the draft Score Card to provide clarity.
V.	The Chamber is concerned that the Reviewed Charter does not adopt the flexibility of the scorecard contained in the DTI Codes. The DMR scorecard is less flexible.	v.	Refer to point IV above.
VI.	The Chamber recommends that reference to other Acts such as the Companies Act, the Small Business Act etc. especially with regards to definitions, be referenced to specific sections in those Acts to allow for consistency in understanding.	vi.	The Department does not support inclusion of citation of specific section from referenced legislation.
VII.	The last paragraph on page eight of the Reviewed Charter seems to be defining the net value principle. If this is the case, the Chamber does not agree to the principle of net value being included.	vii.	The net value principle in issue must be read consistent with the definition of meaningful economic participation in the Charter. The Department is also aligned to the Dtl Codes which make provision for this principle.
VIII.	There is no provision in the MPRDA for amendments to, or review of, the Mining Charter or for the development of a new Charter in substitution of the Original Charter and hence both the 2010 Charter and the reviewed Charter are ultra vires the MPRDA itself.	viii.	Refer to point II above.
IX.	The Chamber is of the view that the above problem should be resolved by amendments to the MPRDA itself and not the Charter.	ix.	Refer to point II above.
X.	Reference is made in the last two paragraphs of the Preamble to the Reviewed Charter, of alignment between the MPRDA and Mining Charter on the one hand, and the BBBEE Act and Codes on the other. The Chamber submits that those paragraphs disclose fundamental	x.	Although the Charter is not a sector Code as per the definition of

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		<p>misconceptions in regard to these issues. The Mining Charter was developed by the DMR Minister in terms of s100 (2) (a) of the MPRDA. The Mining Charter is not a code of good practice issued or gazetted by the Minister of Trade and Industry in terms of s9 of the BBBEE Act. It was in fact developed by the DMR Minister in terms of s100 (2) (a) of the MPRDA and gazetted as such. Furthermore the Mining Charter is also not a transformation Charter for the mining and minerals sector of the economy which was developed by major stakeholders in that sector and gazetted by the Minister of Trade and Industry in terms of s12 of the BBBEE Act. Again, it was in fact developed by the DMR Minister in terms of s100 (2)(a) of the MPRDA and gazetted as such. The need to align the Mining Charter with the BBBEE Act comes from the perceived conflict between the two. There is no such conflict in law.</p> <p>XI. The Chamber proposes that the term "ring fenced" should be substituted with the term "priority element" as per the BEE Codes.</p> <ul style="list-style-type: none"> • There is very limited evidence of alignment of the ownership element in the Mining Charter with the BBBEE Act and Codes. The scorecard does not mention any weighting points related to Ownership and uses "YES/NO" which will not assist in calculating the final weighting points that will lead to calculating the different levels of compliance. • Inconsistent definitions e.g. BEE Compliant company, effective ownership. • The Charter has adopted the BEE Black definition, however, the ownership scorecard still refers to HDSA ownership. • The issue of Continuing Consequences is yet to be settled in the courts. In the amended Codes, the loss of shareholding mirrors the same number of years that the BEE 	<p>a sector code in terms of the BBBEE Act, there is an obligation on all organs of State to implement transformation objectives in terms of the BBBEE Act.</p>
		<p>xi. Noted the Department will look into the wording (priority vs. ring-fenced).</p> <ul style="list-style-type: none"> - The concern regarding the definition of terms (BEE Compliant Company, HDSA ownership, effective ownership) is noted. - Consequences of previous deal matter is before the Courts. 	

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	shareholder was in existence. The Chamber and its members would prefer that the consequences of previous transactions should be retained in perpetuity.	
XII.	The inclusion of a Special Purpose Vehicle to drive ESOPs is a concern as, especially the requirement to incorporate a registered Memorandum of Incorporation (MOI). They introduce a concept of a significant minority block that tends to stifle decision making at Board level. This is also against Company law and JSE Regulations and the Companies Act, 2008.	XII The Department notes the concerns, however this requirement was intended to protect the interests of BEE partners (Esops and communities) and ensure that they actively and meaningfully participate in the empowerment transaction.
XIII.	The Mining Charter will result in the unbundling of some existing transactions (some new, others recently re-financed) in terms of S2.11 (transitional arrangements), i.e. existing mining right holders have a maximum of three (3) years to align with the provisions of the charter. The Chamber is concerned as to whether implications of the requirement to restructure past and existing transactions have been considered by the DMR. The implications of the unbundling process and reorganizing BEE deals will result in increased transactions costs, with financial institutions being the main beneficiaries and no impact on the intended black beneficiaries. Furthermore, the beneficiaries will not have access to more diversified portfolios of mine ownership, and may be limited to only one. A company can apply to the Minister for permission to construct a consolidated transaction however the permission is not a fait accompli.	XIII The highlighted implications are noted as part of the transition. Sufficient mechanisms will be developed to mitigate these implications taking into account the 3 years transitional arrangements provided. A consent to grant consolidation is subject to the terms and conditions of the right, the Act and all relevant considerations, it cannot be a fait accompli as suggested.
XIV.	The term "Effective Ownership" needs to be adequately defined and clarified to limit room for speculation and confusion within the mining industry.	Xiv Noted.
XV.	There is a need to set clear definitions for the following terms on the Ownership Element, BEE Compliant Company, BEE Supplier, Codes, Meaningful economic participation.	Xv definitions of BEE Compliant Company, Meaningful economic participation are provided, however it is noted that BEE Supplier, Codes are not defined.
XVI.	The beneficiation offset only benefits those who have not achieved the 26% target and this is unfair to those companies that have invested in beneficiation in various forms and if they already	

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	have achieved the 26% black ownership target. A workable formula to allow for beneficiation offsets should be developed.	XVI Mr Mabuza and Meno to respond.
XVII.	Ownership Target: The Chamber of Mines supports the target of 26% Black Ownership and further wishes to propose the application of the Modified Flow Through principle for all prospective applications for calculating voting rights and economic interest. The principle of including ESOPs, Communities and Black Entrepreneurs in the BEE structure is accepted. However, Mining Right holders should be allowed to choose vehicles that will work best in their particular structures. The Chamber would like to see the introduction of debt (treatment thereof) for shareholders that do not have the funds. The Mining Charter does not cover this and its modalities. The concept of profit share as part of a model for ownership should be considered.	XVII The Comment on the modified flow through principle is noted and will be considered. The Department notes the concern on type of vehicles to be used, however this requirement was intended to protect the interests of BEE partners (ESOPs and communities) and ensure that they actively and meaningfully participate in the empowerment transaction.
XVIII.	The Mining Charter needs to clarify what is meant by a "BEE compliant enterprise" or a "BEE compliant company" or "small business development". The Codes of Good Practice do not refer to a "BEE compliant enterprise or company" but rather rates companies according to their levels of compliance to the codes or whether it is a Large Enterprise or an Empowering Supplier or a Qualifying Small Enterprise or an Exempt Micro Enterprise.	XVII Debt and funding models are commercial considerations (further consult with Mr Mabuza).
XIX.	The Mining Charter has increased the target under Capital Goods by 20 percentage points, 20 percentage points for consumables and 10 percentage points for services. In addition, the targets also introduced local manufacturing for capital goods and consumables. In alignment with the BBEE codes, the differentiation between capital goods, consumables and services should be removed. If it is retained, clear definitions of these categories need to be provided.	XIX BEE compliant company is defined, the concept BEE compliant enterprise and small business development will be clarified.
XX.		XX Mr Mabuza and Meno to respond on this issue.

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		<p>XXI. Procurement is a priority element in terms of the B-BBEE Codes and the Chamber proposes that this should be retained as a priority element within the Mining Charter.</p> <p>XXII. The BBBEE Codes measure the denominator against which procurement targets are weighted in terms of the Total Measured Procurement Spend (TMPS). The Charter only makes reference to actual spend. This could affect companies negatively as specific non-procurement items and items procured from foreign domiciles may be included in the value of actual spend which may disadvantage mining right holders if they were to be measured against B-BBEE Codes.</p> <p>XXIII. Localisation of competitive supply is fully supported. Targets for local content should, however, be informed by comprehensive studies that indicate local capabilities and will probably differ by types of mining e.g. surface mining, underground coal, underground hard-rock, etc. Targets for small business development should be removed since they interfere with supplier development.</p> <p>XXIV. The onus should be on suppliers and not with mining right holders to verify local content with the SA Bureau of Standards (SABS).</p> <p>XXV. The existing multi-national supplier levy has been a failure. Mining companies do not have the legal right to collect such funds. All that the levy does is increase the cost of doing business for the mining companies.</p> <p>XXVI. Members do not support the Multinational supplier contribution since this contradicts efforts to localise competitive supply. To give effect to this goal a completely different approach than what is included in the Mining Charter will be required. It will probably take about one year to develop a 5-10 year strategy with the requisite targets, incentives, etc.</p> <p>XXVII. The Beneficiation element is misplaced as a stand-alone and it is our considered view that this in effect should form part of the criteria under the Ownership element. The scorecard is very silent</p>	<p>XXI Noted the Department will consider the submission.</p> <p>XXII Mr Mabuza and Mence to assist with a response.</p> <p>XXIII Comprehensive study on local capabilities is noted. Small business development is government's policy prerogative.</p> <p>XXIV The Department interfaces with the right holder and not the suppliers.</p> <p>XXV The Department will create mechanisms to ensure that trust funds are implementable and managed within the prescripts of the law.</p> <p>XXVI See point XXV above.</p> <p>XXVII Noted (Noted Mr Mabuza and Mence to advise).</p>
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	<p>on how the beneficiation initiatives by mining companies will be recognised as this is the means of strengthening the linkages between mining and manufacturing.</p> <p>XXVIII. On Employment Equity, It would assist the industry to utilise provincial EAP targets as per the Employment Equity Act with progressive targets over 5 years. These targets should be more realistic in line with industry workplace profiles and aligned to EAP statistics as reported by the Commission on Employment Equity annually. It would be useful to propose an EAP formula to be used by the mining industry.</p> <p>XXIX. It is suggested that Mining Charter targets must align with the Employment Equity Act five year planning cycle and it is proposed that progressive targets be set.</p> <p>XXX. It is suggested that targets for people with disabilities should be inclusive of all races and the mining industry is committed to ensuring that it plays its part in the absorption of those classified as disabled. The target should therefore be 2% of all employees working on surface.</p> <p>XXXI. Clarification is required on the consequences of not meeting the targets and weighting points within the element.</p> <p>XXXII. On the Human Resource Development element we do not support the establishment of a Ministerial Skills Fund as it is a duplication of the 1% levy currently being paid towards the National Skills Fund.</p> <p>XXXIII. The Chamber proposes that this element be titled Skills Development to reflect the investment on employees as well as community members and to better align with the B-BBEE Codes.</p> <p>XXXIV. On the Mine Community Development element, The DMR needs to clarify the term "labour sending areas".</p>	<p>XXVIII. Department of Labour to advise.</p> <p>XXIX Department of Labour to advise.</p> <p>XXXI Non-compliance with the targets of the charter and the terms and conditions of the right is already provided for in the MPRDA.</p> <p>XXXII The development of the Ministerial Skills fund is intended to enhance development of skills in the mining industry.</p> <p>XXXIII This element is not only limited to skills development, it also includes support towards South African based academic institutions, research and development.</p>
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	<p>XXXV. It is suggested that MCD be measured in the same manner as Socio-Economic Development (SED) in the B-BBEE Codes as follows: If a project is implemented, the mine should prove that at least 75% of the beneficiaries are black as defined. This is possible because a company is supposed to conduct ethnographic assessment through community consultative and collaborative processes to delineate community needs. On that basis 100% of the costs will be taken into account in scoring the mine, taking into account the SED Benefit Factor Matrix. However, in instances where the black beneficiaries are less than 75%, then expenditure will be recognised on a pro-rata basis. Reference can be made to Annexure 500 (A) of the BEE Codes to assist with the calculation.</p> <p>XXXVI. Of significant concern under this element is the target setting of 1% Annual Turnover towards a Ministerial Social Development Trust Fund, which is not endorsed by the Chamber. This type of ad valorem tax is extremely regressive, undermines marginal or loss-making mines and is not supported. Is this similar to the Multi-national Suppliers Contribution towards a Social Fund whose contribution was set a target of 1% Net Profit after Tax (NPAT) and previously included under the Procurement element? The Chamber does not support the target of 1% Annual Turnover and instead proposes 2% of NPAT towards SED.</p> <p>XXXVII. It is important to note that non-monetary contributions are not considered under this element. The Chamber further proposes enhanced recognition of technical and capacity building programmes as part of this element as they facilitate municipalities' ability to deliver more effective services. Furthermore, we propose that collaborative endeavours (with other companies, government departments, development finance institutions etc.) also be given enhanced recognition as recognised in the Codes.</p>	<p>XXXIV The term is already defined in the Mining Charter. (Need to determine department's position on how far does "labour sending areas" extend?)</p> <p>XXXV Noted the department will consider.</p> <p>XXXVI The 1% percent mentioned on the Mine Community Development element is not to be contributed to the MSD trust fund but to be contributed towards local economic community development and labour sending areas. The department rejects the Chamber's proposal to use 2% of NPAT.</p> <p>XXXVII The department acknowledges and accepts the recognition of non-monetary contributions, however this forms part of the mining company's social license to operate and it cannot be used to offset any of the mining charter targets.</p>
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	<p>XXXVIII. The Chamber submits that Housing and Living conditions should not be a priority element (ring fenced) and should be removed as a Mining Charter target after the three year transitional period. The significance of this element can be reflected through a higher weighting.</p> <p>XXXIX. On Reporting (monitoring and compliance), section 28 of the MPRDA makes provision for reporting. However, the Chamber is of the view that this pillar is not necessary as an element in the proposed Mining Charter but that the DMR should rather provide guidelines on how reporting should be complied with. We propose that such Guidelines should be developed for independent monitoring and verification. The Chamber accordingly requests that paragraph 2.9 of the Reviewed Charter be deleted.</p> <p>XL. 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 in relation to paragraph 2.13. The Chamber recommends that the Ownership element be reserved until judgment is reached on the Chamber's Declaratory Order, but in the meanwhile submits that as stated in relation to paragraph 2.1 above, holders be deemed to hold the greater of 25% 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 (40%) on Priority Elements which we recommend to be: Ownership, Procurement, Enterprise and Supplier Development and Skills Development.</p> <p>XLI. We propose that for each element there be progressive targets, cumulatively from the Mining Charter Targets of 2014. The Chamber further submits that there be a transitional arrangement that allows for a period of 5 years to enable a legitimate industry alignment process.</p>
<p>XXXVIII Housing and living conditions of employees remain critical factors to be complied with. This element represents the dignity and privacy of employees.</p> <p>XXXIX This proposal on providing guidelines on reporting is noted. However, the deletion of paragraph 2.9 is rejected, reporting remains a crucial requirement of the law (s28).</p> <p>XL The department is committed to meaningful engagements on the review proposals. MIGDET remains an important consultative forum for all relevant stakeholders. The court case is <i>sub-judice</i> and the Department proceeds to exercise its regulatory function as mandated by the MPRDA. The Department disagrees with the suggested 40 % subminimum for the priority elements.</p> <p>XLI The Department agrees with the progressive realisation of targets over the</p>	

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	<p>XLII. The Chamber submits that paragraph 2.12 should be deleted because the matter of non-compliance falls to be addressed by the MPRDA itself and not by the Mining Charter.</p> <p>XLIII. The Chamber submits that paragraph 2.13 should be deleted since the review of the Mining Charter needs to be governed by the MPRDA itself and not by the Mining Charter. However, insofar as paragraph 2.13 is nevertheless to be retained, and in the spirit of the Stakeholder Declaration (2010), the Chamber would recommend the following addition:</p> <ul style="list-style-type: none"> ▪ <i>Review of the Mining Charter be subject of a consultative multi stakeholder process through the auspices of MIGDETT, the frequency of which to be determined by unanimous decision</i> • The Chamber proposes a scorecard (see Chamber letter) 	<p>three years transitional period. The suggested 5 years transitional period is not supported.</p> <p>XLII The Charter derives from section 100 of the MPRDA. It is a material condition for granting of a mining right in terms of section 23 of the Act, noncompliance therewith is an offense. The Charter reinforces the provisions of the MPRDA relating to non-compliance and does not deviate therefrom.</p> <p>XLIII See point ii above. The Department Disagree with the suggested unanimous decision on formulation of review proposals. The Department proceeds to exercise its regulatory function as mandated by the MPRDA.</p>
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National Union of Mineworkers (NUM)		<p>I. The NUM is calling for the inclusion of "Meaningful consultation" in the definitions section, as we are currently finding it difficult to be meaningfully consulted in the implementation of charter targets and compilation of the mining charter report before submission to the regulator. The definition should read as follows: <i>The extensive consultation conducted by the mining right holders and its stakeholders. These will include the primary stakeholders (which includes employees/workers, organized labour unions and all forums or structures) and Secondary Stakeholders (including relevant local & district municipalities (including their representatives), traditional leaders or authorities).</i></p> <p>II. We are propose the following additions in the Objectives section: <i>The Broad Based Black Economic Empowerment Charter for the South African Industry, herein referred as the "Mining Charter", is a government instrument designed to effect sustainable growth and meaningfully transformation of the mining industry (through a meaningful consultation process, especially with primary stakeholders).</i></p> <p>III. We call on the Department to have an incremental target for the ownership element, which will be 30% by 2018, 32% by 2020 and 35% by 2022 as a minimum targets.</p> <p>IV. On ESOPs our submission is in line with the above target on ownership, with employee's owning 10% by 2018, 12% by 2020 and 15% by 2022.</p> <p>V. We unreservedly reject the notion of a Special Purpose Vehicle, as its founding objectives that were aligned to the companies act are no longer in place. Thus it will only be used as a tool to frustrate communities and workers. We have seen many transactions in the industry that have become an albatross around our necks, thus we are submitting to own shares directly in the mining right holders and our employing company.</p>	<p>i. The Department supports meaningful consultations between stakeholders in giving effect to the relevant elements of the Mining Charter. Compilation of the report is the prerogative of the right holder and it remains Government's responsibility to evaluate, enforce and monitor compliance with the Charter requirements.</p> <p>ii. The Department notes the suggested proposals to the objects of the Charter and supports same to the extent outlined in point number 1 above.</p> <p>iii. The Department supports progressive realisation of the Charter targets within the 3 years transitional period. Any suggestion to go beyond the transitional arrangement is not supported. The</p>
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		<p>VI. We are calling for all employees and community ownership transactions to be ring-fenced and funded by the mining right holder for free or with no obligation on the trust of future repayments or dividends withholding. The Mining Charter should also introduce a new concept of ESOP/Community Trust mandatory rules, namely:</p> <ul style="list-style-type: none"> a. A loan free scheme or employer funded scheme b. Economic interest in the hands of an entity (managed and controlled by participants) or individual employee c. Flow through principle as per 3.3 of the Generic Codes d. Returns, profit sharing or dividends needs to be paid out each time the company declares (85% as per the Generic codes). e. The vesting period needs to be maximum 5 years f. Beneficiary education should be mandatory g. Trustee continuous education is critical h. Significant Employee participation in the scheme i. Equal distribution of shares to all employees, especially Black People j. ESOP Trust representation in Annual General Meetings k. Limited risk to employees l. Trusts need to be independently managed outside the control of Management. <p>VII. We are not sure of the industry's ability to achieve the 60% capital goods target, hence we would in line with other targets propose an incremental approach. That will see the industry starting on 40% locally manufactured goods by 2018, 50% by 2020 and 60% by 2022. The aim to ensure we have achievable targets and we give industry sufficient time to grow the market</p>	<p>Department will consider the proposed increase in targets. See response in iii above.</p> <p>iv.</p> <p>v. The Department notes the concerns, however this requirement was intended to protect the interests of BEE partners (Esops and communities) and ensure that they actively and meaningfully participate in the development of mining projects/s.</p> <p>vi. Debt and funding models are commercial considerations (further consult with Mr Mabuza).</p> <p>The Department to study the Dtl's report on Management of Trust instruments and further improve the proposals in the Charter relating to Trusts.</p> <p>VII The Department notes the concern and will reconsider the proposals.</p>
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	for the relevant absorption. The same principle should apply for the consumables, but their incremental targets should be 50% by 2018, 60% by 2020 and 70% by 2022 for consumables.	
VIII.	On Beneficiation The NUM is calling for the fast tracking of the current Amendment Bill in Parliament, in order for the DMR and DTI to fast track the implementation of the Beneficiation Strategy in line with the National Development and Industrial Policy Action Plan.	VIII. The Department notes the concern. The process to finalise the MPRDA Bill is managed by Parliament.
IX.	On Employment Equity the reporting scorecard should reflecting the income disparities among those in the same levels, to avoid people being appointed to key positions but are never remunerated equally or lacking relevant decisions making powers.	IX The Department of Labour to advise.
X.	On human resource development, the allocation of a percentage of mineral right holder's payroll to skill development, training and research is supported, but we think it's important for it to be aligned to the current 6% in the generic codes of good practice. The money spent should be restricted to actual fees paid for a course or programme and not miscellaneous logistical costs.	X The Charter 5% proposal excludes the mandatory 1% skills levy as per the Skills Levy legislation. (Verify with Dti).
XI.	We would like to call on the Department to revise the Housing and Living Conditions Standards that were gazetted in 2009.	XI The Department notes this concern and will address it accordingly upon finalisation of the Mining Charter.
XII.	We call on the Department of Mineral Resources to strengthen and capacitate the Mineral Regulations branch, as we believe the below compliance with Section 28 (2) (C) of the MPRDA is non-negotiable and compliance should be met with relevant corrective measures.	XII The Department notes this concern and will address it accordingly.
XIII.	We would like to again express our concern with the removal of the Sustainable Development element in the draft mining charter.	XIII The Department notes this concern and will address it accordingly.

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3. Wits Centre for Sustainability and Mining (CIMS)	<p>i. Socio-economic and skills development initiatives associated with the implementation of the Mining Charter should be streamlined. Specifically the Mining Charter makes no mention of the Social and Labour Plans (SLPs). This is a serious oversight and means that contributions to communities will become more fragmented despite increased revenue. The obligation placed on mining companies to contribute a minimum of 1% of turnover to local community development (2.6a) is very similar to the obligation imposed by the SLP. Is this obligation reflecting the same thing? We suggest linking to the SLP in this paragraph to clarify the similarity or difference. Going further, the measures in the draft Reviewed Charter are poorly expressed, specifically for Mine Community Development, but also for other elements of the Charter. We suggest that the measures be reviewed, and that the Scorecard be amended to include measures, as it does in the current (2010) Charter.</p> <p>ii. Of additional concern here is the contribution of multinationals to socio-economic development of local communities. Thus the draft Charter states that multinationals must contribute toward "socio-economic development of local communities", but the mechanism proposed is through a single Social Development Trust Fund (SDTF). How is the SDTF going to direct spending to local communities? At best we suggest establishing SDTFs in each of the regions where multi-nationals supply goods. We also note that the trustees of the proposed SDTF do not have to include stakeholders from communities, and suggest that there must be community trustees. Alternatively, multinationals could make their contributions to the SLPs of the mines that they supply, through a transparent, ring-fenced allocation of funds. That would ensure that the funds are closely tied to the communities most affected by the goods that are supplied.</p>	<p>i. The Department will reconsider the relationship between the SLP and the Charter as different legislative requirements to ensure alignment and removal of ambiguities.</p> <p>ii. The Department will develop appropriate mechanisms for management of the Multinational Supplier Trust fund for the benefit of not only communities but all the People of South Africa.</p>
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		<p>iii. Of equal concern are the proposals for human resource development (Section 2.5). This section establishes a Ministerial Skills Development Trust Fund (SDT). How does the SDT relate to the Mining Qualifications Authority (MQA)? The aim in 2.5(a) is to invest in essential skills development activities and those listed are exactly the remit of the MQA. We strongly suggest that these funds go to the MQA rather than to establish a new entity. If there are reasons why the MQA is not suitable, those reasons should be addressed, rather than creating a duplicate structure. We note that the governance of the SDT is also identical to that of the MQA: organized business, organized labour and government. If the SDT is retained, its relationship to the MQA needs to be clarified.</p> <p>iv. We recommend that guidance and/or a guideline of preferred practice would be a very useful addition to the draft Charter, to promote a beyond compliance approach. This will avoid the pitfalls of ticking boxes only whilst important issues are overlooked or conveniently forgotten. Guidance is suggested in the following areas:</p> <ul style="list-style-type: none"> For setting up the Memoranda of Incorporation to ensure that all the participants are fairly considered and that the Special Purpose Vehicle (SPV) does not become just a mechanism for one of the parties to take control over the others. For the establishment of a "conducive environment to ensure diversity". Given the discriminatory past of mining in particular the establishment of a diverse non-racist and non-sexist workplace cannot rely solely on compliance with quotas. We suggest that the draft Charter should provide a guideline on best practice for the advancement of Black individuals and for women of all race groups. The guideline can make clear options for demonstrable initiatives to support the career development of these groups. 	<p>iii. The development of the Ministerial Skills fund is intended to enhance development of skills in the mining industry.</p> <p>iv. The Department will develop a guideline on reporting in respect of all the elements of the Charter. This should facilitate implementation of the Charter requirements.</p>
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	<ul style="list-style-type: none"> For regional collaboration between private, public and civil society stakeholders in mining regions concerning socio-economic and infrastructure development (including housing), regional mine closure, the mitigation of environmental impacts and environmental rehabilitation. 	
V.	Many of the issues that besiege mining today can only be resolved through collaboration between stakeholders including different mining operations in mining regions. This is expressed in the draft Charter (Section 2.6) but there is no follow through with respect to compliance with this. This is a serious oversight.	V. The Department supports collaboration and will elaborate on these aspects on the review proposals.
VI.	We suggest re-introducing the objective: "Promote sustainable development and growth of the mining industry". The reintroduction would serve to show a) that the Charter has not forgotten the need for environmental management and improved health and safety performance, and b) that the Charter is of larger value to the nation than just righting past wrongs, important as that is: it is also aiming to grow the wealth of the country.	VI The Department will reconsider this matter.
VII.	A focus on linkages rather than just beneficiation may be the answer and revising both the objective and the subsequent section of the Charter to this end is appropriate.	VII. Mr Menoe to respond.
VIII.	The Draft Charter will be strengthened by including a focus on the development and promotion of small scale mining.	VIII. The Mining Charter does not apply to small scale mining in terms of section 27 of the MPRDA.
IX.	OWNERSHIP (2.1): Section 2.1b specifies that the community, workers and Black entrepreneurs should share 5% of the 26% allocated to Black persons. There is an issue of clarity, on whether this is 5% each or 5% in total. Beyond this it is unclear why Black entrepreneurs are specifically listed? Entrepreneurs are the natural investors in mining ventures, and would be expected to	IX The Charter intended to refer to a minimum of 5% to each category to ensure Broad Based and meaningful transformation.

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		<p>make up the full 26% if they could. We suggest that only workers and the community be listed explicitly as have minimum allocations within the 26%.</p> <p>The requirement that trusts must include representation from traditional authorities is a problem for three reasons: 1) There are regions in the country without traditional authorities, such as parts of the Free State, 2) The legitimacy of traditional leaders is contested in some communities, and 3) Conflict between communities and traditional leaders can easily cripple the effectiveness of the trusts to act, as they become mired in the disputes of their trustees.</p> <p>XI. The mechanism laid down in the draft Charter that every mining right must have an SPV may have an unintended consequence: it ring-fences investment by entrepreneurs or other "real" investors (as opposed to communities and workers who are gifted their stake in the company as recognition of the costs that they bear). That ring-fencing will create a form of second-class shareholder. While this will ensure that Black shareholding has some permanence, it is not a freely tradable share in the company, which is therefore a poor investment.</p> <p>XII. PROCUREMENT (2.2): The text is unclear in the sections on capital goods and consumables on whether 60% of capital goods must be manufactured locally, or whether 60% of locally manufactured goods must be from BEE compliant suppliers. If it is the second, then there is no regulation in the draft Charter of procurement of goods that are manufactured outside South Africa. We recommend that these regulations be made clear, and explicitly take into account local and foreign manufacture.</p> <p>XIII. BENEFICIATION (2.3): As discussed above, we strongly urge that the Charter give more weight to side-stream linkages and also consider up-stream linkages, and rename this section LINKAGES.</p>	<p>Entrepreneurs refers to Black entrepreneurs and these are essential to ensure Broad Based and meaningful transformation.</p> <p>X The Department notes the concern and will consider expanding on trust representation.</p> <p>XI The Department notes the concerns regarding SPV's and will reconsider the proposals and provide alternative mechanisms to structure the 26% BEE shareholding.</p> <p>XII They must both be from BEE compliant and locally manufactured. The definitions of these terms are provided.</p> <p>XIII Mr Menoe to respond.</p>
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	<p>XIV. EMPLOYMENT EQUITY (2.4): A "conducive environment to ensure diversity" is not created by quota alone. We suggest that the draft Charter should provide a guideline on best practice for advancement of Black individuals and women of all race groups.</p> <p>XV. The draft Charter does not deal adequately with gender equity, but regards it as a subcategory of race equity, which it is not. Targets for gender equity should be set in the first instance for all women. Specific targets for Black female representation can then also be set. The present targets at executive management level do not do justice to the significant contribution that all women can make in South Africa at a senior level.</p> <p>XVI. HOUSING AND LIVING CONDITIONS (2.7): This objective, as drafted, presents no further change to the previous version of the Charter. In fact, the housing objectives as stated here were reached, and the discussion in the sector has now moved on into further issues related to housing. We have two suggestions:</p> <p>There are many situations in which home ownership is not the desire of mine workers. Therefore, we suggest strengthening the recommendations on what mechanisms are needed to provide robust rental options for mineworkers.</p> <p>Home ownership options are closely tied to local development, so we suggest a need for meaningful consultation and cooperation within the region of mining companies and local government to plan housing and community development.</p> <p>XVII. REPORTING (MONITORING AND COMPLIANCE) (2.9): We urge that the DMR increase its capacity to oversee, rather than simply monitor and evaluate, the levels of compliance with the Charter.</p> <p>XVIII. A number of definitions are missing from the Charter, or are problematic:</p>	<p>XIV Empowerment of Black persons is National government policy and the Charter seeks to give effect to same.</p> <p>XV Empowerment of Black persons is National government policy and the Charter seeks to give effect to same.</p> <p>XVI. The reviewed Charter already provides for Integrated Housing Development in line with the DHS policies on integrated human settlements including home ownership options.</p> <p>XVII Submission is noted.</p> <p>XVIII The Department notes the suggestions on definition of terms and concepts and will consider same in the review process.</p>
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		<ul style="list-style-type: none"> • The current definition of stakeholders only includes affected parties. We suggest it also include interested parties, as that it is part of the usual definition of a stakeholder. • The word "black" is defined in the document, and is sometimes used as defined, with a capital letter, but it is also used with a small letter, "black", leading to a suggestion that it refers to a different concept. To avoid confusion, we suggest using "Black", the defined term, throughout. • The term "Black Entrepreneur" is used without definition in 2.1b. This is concerning as the definition of "Entrepreneur" is very wide and open to mis-interpretation. • There needs to be explicit recognition that many mineworkers are foreign national migrants. • It is not clear in the document whether "Labour sending areas" includes or excludes areas outside of South Africa. We suggest that this be made explicit. In particular, parts of the draft Charter suggest spending in labour sending areas. Can this spending be in neighboring countries? This needs to be made clear. • The phrase "enterprise development" is used in the draft Charter, without definition. • The section on Procurement, (2.2), uses the phrases "small business development which are BEE compliant" and "BEE compliant enterprise development". These two phrases need to be defined and the difference between them explained. • The definition of "Community" excludes foreign migrant workers, who are a major part of many near-mine communities. How does the Charter recognise these workers? • Core skills are defined with a list of examples that are all engineering and technical related. In the context of the draft Charter, mines require core skills in many areas,
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		<p>particularly in community development and wellbeing. We suggest that the definition of core skills be extended to include all professional skills required in mining, including but not limited to geology, ventilation, finance, community development and wellbeing, occupational hygiene and health. We also suggest a further need for development of skills related to community development such as business mentorship.</p>	
XIX.		<p>The paragraphs on Employment Equity all use the phrase "Employment Active Population". The way that EAP is used is incorrect, so it would make more sense to remove it. For example, the Employment Active Population is about 88% black, 44% black female. To justify specifying that, for example, executive directors should be 25% black female is not in line with the EAP. We suggest the phrase be removed throughout.</p>	XIX The Department of labour to advise.
XX.		<p>In the section on procurement, 2.2, neither "multinational" nor "local mining companies" are defined. As written, it may allow London-based companies operating in South Africa to avoid making the specified contribution.</p>	XX Noted the submission will be considered in the review process (page 19 second last paragraph).
XXI.		<p>At many places in the document, but particularly in 2.2 and 2.5, there are words like "60% Black, of which 30% is black females". This implies that 18% (60% x 30%) of the total should be black females, which is presumably not the intent. To add to the confusion, in 2.5c, it is the intent (15% x 5%). We suggest defining these percentages of percentages or being explicit through words such as "60% Black, 50% of whom are black females making up 30% of the total".</p>	XXI Submission is noted and further clarity to be provided. In consultation with the Department of Labour.
XXII.		<p>In 2.1, 2.1b only mentions "workers", while clause 2.1j mentions "black workers" as being the same group. For consistency, one of the two must be changed, or an explanation added.</p>	XXII Noted reference to Black in 2.1 (j) will be deleted.
XXIII.		<p>The last sentence of 2.1 on page 3 is unclear because it suggests that at any time a rights holder whose BEE participation drops below 26% may have three years to restore the situation. We</p>	

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		<p>suggest: "For a mining right holder that, at the time of publication of the Charter review, has experienced a loss of BEE participation to below 26%, for whatever reason, that mining right holder must review its empowerment credentials within the three year transitional period from the date of publication of the amended 2016 Charter.</p> <p>XXIV. In 2.5, it needs to be clear that while 15% of the 5% goes to the Ministerial Skills Development Trust Fund, the mining industry has to manage the remaining 85%.</p> <p>XXV. At the end 2.5, there is reference to a mechanism for companies to offset ownership requirements by undertaking beneficiation. The mechanism for this is not clear, and beneficiation is not present on the scorecard. We suggest that this be clarified or removed.</p> <p>XXVI. In 2.6, as well as local municipalities, the Charter also needs to mention Integrated and Local Development Plans (IDPs) aln 2.10, we suggest that the compliance process should occur more often than annually. We suggest that reporting may be annual, but that monitoring should be at least twice annually. (LDPs).</p> <p>XXVII. please give further reference information on other Acts and documents. The Charter refers to other Acts and documents. In some cases it gives a complete reference, for example in paragraph 2.9, there is a reference to S28(2)(c) of the MPRDA. However, in many other places, the reference is vague or absent.</p>	<p>XIII Clarify regarding the correct interpretation of the three years transitional period will be clarified.</p> <p>XXIV This is implied in the Charter provision.</p> <p>XXV Mr Menoe to respond.</p> <p>XXVI The annual reporting requirement is sufficient. Inspectors are empowered to conduct inspections as and when the need arises.</p> <p>XXVII The Department notes the submission and will consider it in the review process.</p>
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4. Webber Wentzel	General,	<p>i. The development of the draft Mining Charter, like the 2010 Mining Charter, is beyond the scope of section 100 (2) (a), the empowering provision, and thus is <i>ultra vires</i>. In our view, the intention of the parliament in not endowing the Minister with the power to amend the draft Mining Charter was deliberate and designed to promote regulatory certainty within the mining industry.</p> <p>ii. We are of the view that section 100(2)(a) of the MPRDA must be amended to give the Minister the requisite authority to amend the draft Mining Charter, before clause 2.13 of the draft Mining Charter can be enforced furthermore clause 2.13 of the draft Mining Charter must be amended so as to avoid vagueness and the consequent bestowal of such a wide discretion upon the Minister.</p> <p>iii. When considering whether the draft Mining Charter could be applied by the Minister to mining rights granted under the Original Mining Charter or the 2010 Mining Charter, the first important consideration is that neither of the Charters are legislative provisions. Neither of the two Charters was subject to the usual parliamentary processes, and thus cannot be simply accepted as having the force of legislation. It would be a most anomalous position for the draft Mining Charter to apply, either retrospectively or retroactively, to rights which were granted with reference to the Original Mining Charter or the 2010 Mining Charter. The effect of this would be that a guideline, in the form of a charter, has the effect amending national legislation (the MPRDA). Such an interpretation would certainly be unconstitutional, for the simple reason that laws cannot be amended by way of guidelines published through a consultative process with the mining industry. The only manner of changing legislation is by promulgation of new legislation through the prescribed parliamentary process.</p>	<p>i. The powers to amend the Charter is implied from the powers conferred on the Minister in terms of section 100 (2) (a) to develop the Charter.</p> <p>(ii) See comment (i) above, the MPRDA Bill proposes amendments to section 100(2) (a) to clarify any ambiguities.</p> <p>(iii) 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 <i>ultra vires</i> the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.</p>
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	IV. The second consideration is that the draft Mining Charter does not state that it applies retrospectively. There is therefore no basis for the Minister to impose the requirements of the draft Mining Charter in relation to a right granted under the Original Mining Charter.	(IV) Refer to point (III) above.
	V. The final and most fundamental issue is that once mining rights are granted, there is no basis for the Minister to re-consider the decision to grant the right. The Minister is <i>functus officio</i> and can only cancel the right in the limited circumstances prescribed in section 47 of the MPRDA.	(V) Refer to point (III) above.
	VI. The definition of "BEE Compliant Entity" does not specify what is meant by "compliant" in the context of the Codes of Good Practice on Black Economic Empowerment, 2013 (the "Codes"). The definition of the term "black people" in the draft Mining Charter matches the definition of this term in the Codes. While this is a positive development, we submit there must some form of grand fathering of the analogous definition previously used such "Historically Disadvantaged South African" ("HDSA") and the term "Historically Disadvantaged Person", which continues to be used in the MPRDA itself.	(VI) The Department notes the suggestions on definition of terms and concepts and will consider same in the review process. The Charter's principal object is to align with the BEE Act and the Dti Codes. BEE compliant means 100% Black owned or 50+1 (Dti to advise of BEE compliant Entity).
	VII. Effective ownership" is defined under the draft Mining Charter as "the meaningful participation of black people in the ownership, voting rights, economic interest and management control of mining entities". The term has been used in clause 2.1 (ownership) of the draft Mining Charter: "[e]ffective ownership is a requisite instrument to effect meaningful integration of black people into the mainstream economy." The language of the definition of "meaningful economic participation" regarding the financing by third parties of BEE transactions should be brought into line with the language of the Codes and the concept of "net value" espoused therein.	(VII) Dti to advise on the relationship between concept of net value and meaningful economic participation.
	VIII. We submit that the phrase "BEE shall have full shareholder rights..." is unintelligible. We submit that a noun should be inserted after "BEE" in order to rectify this error. We further submit,	VII The Department notes the concern on reference to "beneficiaries". It is the intention of the Charter that there must be share capital.

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		<p>however, that this word should not be 'beneficiaries' as this would lead to an untenable situation in which all BEE beneficiaries would be eligible for shareholders' rights, despite the fact that they may not be members of a company with share capital.</p> <p>IX. The draft Mining Charter needs to be amended to include definitions of the following terms in order to promote regulatory certainty, and prevent these clauses being taken on judicial review as a result of the wide and unguided discretion given to the administrator as a result of such vague clauses:</p> <ul style="list-style-type: none"> • "services" and "consumables" • "core and critical skills" • "material constraints" <p>X. It is concerning that the holder of a mining right must establish a Special Purpose Vehicle ("SPV") for each mining right held by it. This will not only be a costly exercise, but will also increase the administrative burden on empowerment partners. It is unclear whether the aforementioned requirements applicable to the holders of prospecting rights.</p> <p>XI. Clause 2.1 requires mining companies to "consolidate the empowerment transactions". No further explanation is given in clause 2.1 as to the reason or the meaning of this requirement.</p> <p>XII. Clause 2.1 also requires mining companies to "align BEE transaction(s) concluded prior to the coming into operation of the amended mining charter 2010 with the reviewed mining Charter 2016". This requirement will severely impact the current BEE shareholders and their funding arrangements. We submit that the abovementioned aspects of this clause be rephrased in clearer language so as to promote regulatory certainty.</p>	<p>IX. The Charter defines core and critical skills, The Department will consider the definitions of services and consumables. Material constraints are determinable on a case by case basis and thus difficult to define.</p> <p>(X) The Department notes the concern regarding a SPV per Mining Rights and will reconsider the proposal. The Charter applies to certain prospecting rights as per section 17 (4) of the MPRDA.</p> <p>XI Consolidation in terms of section 102 process.</p> <p>XII The Charter is clear that the existing right holders are to revise their empowerment credentials to align with the new requirements within the 3 years transitional period provided.</p>
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		<p>XIII. We note that the draft Mining Charter disregard the concept of "once empowered always empowered" by requiring mining companies to maintain a 26 per cent BEE shareholding at all times. This very question is the subject of court proceedings and it is inappropriate for the DMR to unilaterally dictate this matter.</p> <p>XIV. We also note that the "continuing consequence" principle has been done away with. The "continuing consequence" principle (as it is articulated in the Original Mining Charter and the 2010 Mining Charter) deals with the question of whether empowerment transactions which were previously implemented can be relied upon for the purposes of demonstrating that a further mining right should be granted to the applicant.</p> <p>XV. Clause 2.1 requires that the SPV must issue shares to an ESOP and the union must have representation on the Trust and SPV board. This is a key concern as not all mining operations have proper trade union representation. It is therefore unclear how smaller mining companies will comply with this ring fenced element.</p> <p>XVI. We note that ownership is intended to extend to "workers". There is a clear negative production impact in instances of mine or workplace stoppages either as a result of instructions in terms of section 54 of the Mine Health and Safety Act, 1996 ("MHSA"), employees exercising their rights in terms of section 23 of the MHSA or in the aftermath of workplace incidents and fatalities. These have historically been supported by, or at the very least had little push back from, employees and employee representatives. This dynamic will change in the event that employees will personally feel the effects of workplace stoppages and the regulator must be in a position to address these issues.</p>	<p>XII The Court process is note, however the Minister is not precluded from exercising regulatory functions in terms of the Act.</p> <p>XIV The Charter proposes that right holders should be BEE compliant at all times irrespective of whether the BEE partner has existed, sold shares to non-BEE entity.</p> <p>XV The Department notes the concern and will relook at the SPV proposals including Trust representation.</p> <p>XVI. DMR disagrees health and safety of employees at mines remains paramount.</p>
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		<p>XVII. Another key concern regarding clause 2.1 is the lack of clarity regarding the intersection between the terms "effective ownership" and "meaningful economic participation" within the context of clause 2.1. The requirement under "meaningful economic participation" that BEE transactions be concluded with identifiable beneficiaries in the form of BEE entrepreneurs, workers (including ESOPs) and communities, however, does not tie in with the requirement of "effective ownership", which, as discussed in 6.3 above, appears to preclude passive involvement of HDSAs, and as a result precludes non-operational partners such as ESOPs and communities, which generally neither exercise voting rights nor management control in respect of the relevant mining entity. Thus "meaningful economic participation" and "effective ownership" are contradictory and this perpetuates regulatory uncertainty in the mining sector.</p> <p>XVIII. On beneficiation, it is unclear how the 11 per cent is calculated and whether, once agreed, it remains in force indefinitely or whether it may be revoked. Furthermore, it is unclear how this relates to the requirement to establish a SPV. It is therefore unclear whether a company will be entitled to claim the same beneficiation credit percentage for each right.</p> <p>XIX. Further, the 30 per cent of the 60 per cent must be given to "small business development which are BEE compliant" and furthermore, 10 per cent of this 30 per cent must be reserved for BEE compliant enterprise development. It is not clear if (i) the 2016 draft Mining Charter is referencing some form of business incubation forum or actual BEE owned businesses or (ii) the DMR intends to put place business development programs or will rely on those that are already been developed by the Dti.</p> <p>XX. There does not appear to be a proviso in the revised charter requiring employers to consider whether the suppliers are able to meet the requirements of section 21 of the MHSA. The practical</p>	<p>XVII. The Department notes the concern on reference to "beneficiaries". It is the intention of the Charter that there must be share capital.</p> <p>(XVIII) Mr Menoe to advise.</p> <p>XIX The Department has a collective responsibility to contribute towards small business development. The Charter is aligned to the BBEEE Act and the Codes and well as small business development imperatives driven by the Dept of Small Business Development.</p>
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	effect of this is that strict compliance with the draft Mining Charter in the absence of this assistance (which we propose should be provided by the applicable regulator or Government Agency) is that a scenario is created in terms of which the supplier is placed at risk of criminal sanction for failing to meet the obligations of section 21 of the MHSA and/or the supplier will not receive the necessary business from the surrounding operations on the basis that the health and safety criteria are not met, and thus small businesses will fail.	XX Noted (MR Mokhonoana to assist, does the MHSA apply to suppliers?).
	<p>XXI. The definition of a "mine community" is not sufficiently clear to enable mining companies to accurately determine who they are dealing when seeking that elusive "social licence to operate". It is also not clear who would become the voice of the relevant community given that there is a hardly consensus regarding leadership in certain communities. Assuming the community (and its representatives) are sufficiently identifiable and there is meaningful consultation and engagement with the relevant community, should that result in some form of written agreement between the mining company and the community? This aspect should be clarified.</p> <p>XXII. There are currently four policy documents that regulate housing and living conditions in the mining sector, being (i) the current Mining Charter, (ii) the Housing and Living Standards, 2009 ("H&LS") (iii) SLP Guidelines and (iv) Mining Codes. Whilst, in some respects, there are inconsistencies between these policy documents, there are also inconsistencies. The draft Mining Charter does not cure this inconsistency.</p> <p>XXIII. The draft Mining Charter also sets out eight elements with which a mining company is required to comply, including an element entitled "Housing and Living Conditions". A weighted scorecard accompanies the revised Mining Charter, but there is no weighting in regard to Housing and Living</p>	<p>XXI The definition of mine community is clear. The DMR, COGTA and the National House of traditional leaders to collaborate to iron out issues with mine communities.</p> <p>XXII The Department will revise all the mentioned policy documents to ensure that there is alignment.</p> <p>XXIII The Housing and living conditions element is a priority element which requires 100% compliance at all times hence the yes</p>

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	Standard requirements, merely a "yes" or "no" requirement. Thus, the DMR may require strict compliance. Where measurable deliverables are not clearly set out determination on whether there has been compliance becomes purely a subjective exercise on the part of the Minister and goal posts may shift from time to time. That is not ideal in an industry severely plagued, in part, due to regulatory uncertainty.	and no requirement in terms of the score card.
XXIV.	It is questionable whether Employment Equity targets are realistic and achievable considering the current economic and market circumstances facing the industry as well as the lack of properly trained and experienced candidates from a HDSA background.	XXIV The Department of Labour to advise. The Charter has removed reference to HPSA and substituted same with Black people.
XXV.	The targets are also much higher than in any other industry. The targets in relation to black female representation are equally unrealistic particularly at the level of Engineers and technical personnel at senior level required in the Mining industry. It would need to be accompanied by appropriately timed program.	XXV The Department of Labour to advise.
XXVI.	In respect of Human Resources Development ("HRD") mining companies are now required to pay 5 per cent of their annual payroll towards essential skills development. Such contribution is in addition to the existing mandatory skills levy (2 per cent of annual payroll paid in terms of the Skills Development Act, 2008). Although mining companies are obtaining rebates in relation to the mandatory skills levy it is not clear whether there will be any additional Government assistance to mining companies in respect of skills development. A more coordinated approach in the mining sector SETA regarding skills development training is required.	XXVI The determination of rebates is a function of the Department of Finance (treasury).
XXVII.	Under the 2010 Mining Charter, white women are included within the definition of "Historically Disadvantaged South Africans" and are therefore recognized as beneficiaries for the purposes of	XXVII The Department of labour to advise.

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		<p>broad based black economic empowerment initiatives. This is in alignment with the provisions of the Employment Equity Act, 55 of 1998 ("the EEA"). However, the draft Mining Charter excludes white women from the minimum participation thresholds. Application of the thresholds may, therefore, be in conflict with the EEA and also result in a constitutional challenge to the draft Mining Charter as it currently stands.</p> <p>XXVIII. Employers will be required to employ 2 per cent of black employees with disabilities as a percentage of all employees. This does not however appear to consider the various regulatory obligations set out in the MHSA and the Chief Inspector of Mines' mandatory code of practice for minimum standards of fitness to perform work at a mine.</p> <p>XXIX. in order to legally achieve these targets while not increasing any risks to health or safety of employees at mines, this will require an assessment and update to the guideline as to what positions may be held by persons with disabilities at mines, the various levels of disabilities that may be regarded as "fit to perform work" and the restrictions that should be placed on various employees who have disabilities but who may be regarded as fit for certain tasks.</p> <p>XXX. The most concerning proposal, however, from a health and safety compliance perspective is the apparent explicit requirements that persons with core and critical skills be "fast tracked". This is directly contradictory to the requirements of the MHSA relating to competency in general and the criteria of experience in particular.</p> <p>XXXI. Section 47 of the MPRDA grants the Minister the authority to cancel or suspend any reconnaissance permission, prospecting right, mining right, mining permit or retention permit. There is no mention of the draft Mining Charter in section 47. Thus, the ability of the Minister to enforce will need to be assessed.</p>	<p>XXVIII Mr Mokhoanana to assist.</p> <p>XXIX Mr Mokhoanana to advise.</p> <p>XXX Mr Mokhoanana to assist.</p> <p>XXXI Compliance with the requirements of the Charter is a material terms and conditions of a mining right. The term "this Act" is defined to include any regulation and terms and</p>
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		conditions of a right granted in terms of the Act.
5. Black Business Council (BBC)	<p>i. The Beneficiation in the current Mining Charter is very thin on details how this will unfold. It is the view of the Black Business Council that under Beneficiation the overarching goal should be clear on the ways in which the mining sector can promote sustainable development; through the following: Backward linkages: the local and/or regional purchases of different required inputs. The prospects for the production of capital goods, supplies and services needed for investments and operations (e.g., transportation services) will be enhanced through the mineral venture's demand for these inputs. Forward linkages: downstream activities, such as processing, refining and fabricating the crude ores and concentrates. Since the extracted ores often have to pass a number of transformation stages before final use, the forward linkages can be significant. Final-demand linkages: the income that employees at the mine and their households spend on goods and services in the local community or the adjacent region. For instance, an employment multiplier of 3 would imply that for every job created in the mining industry, there will be an additional two jobs created in other sectors in the region. Fiscal linkages: the tax and royalty revenues used by regional governments to develop infrastructure and/or to purchase goods and services. The benefits of infrastructure investments (e.g., roads, electricity grids etc.) will typically not only be appropriated by the mining company but will also spill over to other companies as well as to households.</p> <p>ii. The revised new targets for black people, black women and black disabled employees should be set to be in line with EAP (Economically Active Population) targets, to avoid over representation; The talent pool, has to be identified and fast tracked to ensure high level operational exposure in</p>	<p>(i) Mr Menoe to assist.</p> <p>(ii) DMR agrees.</p>

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

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

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IV.	<p>SACCI notes the provision that mining rights holders must verify local content for capital and consumer goods with the South African Bureau of Standards (SABS). SACCI questions why it should be the responsibility of the mining company to verify the content of capital and consumer goods with the SABS. It would be to the advantage of the supplier to obtain the certificate which can be provided to the mining company. Assuming more than one mine uses the same supplier, the SABS verification would have to be obtained by each mine, whereas if the supplier gets it, it would only need to be done once. This will save time, costs and red tape.</p> <p>SACCI queries what would happen if the facilities for the testing of mineral samples are not available in South Africa or verification from a second facility is deemed necessary, but there is not one in the country. SACCI seeks clarification on whether the Minister's written consent will be required each time this occurs, if consent would be given for a number of operations, or if it would be given once - to expire when facilities are established in South Africa.</p> <p>SACCI believes that by making mining companies responsible for beneficiation it is encouraging vertical integration of the sector. SACCI recalls extensive debate that took place in the liquid fuels industry where participation of the oil companies in service stations was frowned on. SACCI proposes that the benefits and disadvantages of this provision be carefully studied before mining companies are r... It is noted that up to 11% of the 26% ownership requirement can be allocated to beneficiation. SACCI believes that Instruments such as the Manufacturing Competitiveness Enhancement Fund, the Black Supplier Development Programme, Incubation Support Programme, Small Enterprise Finance Agency and National Empowerment Fund should also be tapped for support required to undertake beneficiation.</p>	<p>IV. The Department interfaces with the mining right holder. The proposal is to place an obligation to furnish proof of verification on the Mining right holder. (DMR to consider revising wording to capture the correct intention).</p> <p>V. Ministerial consent will be granted on a case by case basis if no local facilities exist.</p> <p>VI Mr Meno to advise.</p>

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			VII Department of Labour to Advise.
VII.	SACCI recognizes the need for women to be empowered. However, the targets must be considered in the light of the number of women who voluntarily become interested and follow careers in the mining industry. Between 650-700 women, of which 230 -300, are black are currently studying mining engineering at universities in South Africa. Careers in the sector have only relatively recently been taken up by women. SACCI believes that given the relatively small number of women with expertise required for the achievement of the targets, be it for senior or middle management, mining companies will face challenges in meeting them.		
VIII.	Regarding the employment of persons with disabilities it must be recognized that there are many occupations in the industry that place severe constraints on the employment of persons with disabilities due to a number of factors, not least the dangerous nature of the operations. This will place a restriction on the available positions that can be filled by persons with disabilities.		VIII Mr Mokhoanana to advise.
IX.	On HRD, While the need to improve the skills levels of not only employees in the mining sector, but in the country as a whole, is an imperative, the cost of skills development must be seen in the light of the current operating environment. Added to the 1% of total payroll paid in respect of the Skills Development Levy, the additional 5% called for in the draft Charter in respect of the Ministerial Skills Development Fund makes the total contribution to skills development 6% of total payroll. The 5% can be construed as an additional tax payable, albeit for a predetermined cause. SACCI believes that cognisance must be taken of the current global situation, the decline in the commodity markets and the fall in local production. This increase in "operating costs" as commendable as it may be, could have a serious negative impact on the continued sustainability of the operations of some mines.		IX The DMR notes the concern.

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		<p>X. On Mine Community Development, it is an imperative to improve the environment and living conditions of South Africans, be it in mining communities or elsewhere in the country. An anomalous outcome of improved conditions, however, is that the area becomes a magnet for migration of people seeking improved standards and jobs. This often results in the growth of informal settlements where living conditions are unsatisfactory. This scenario becomes a vicious circle of improvements in the environment and living conditions, migration into the area, development of informal settlements, improvements in the environment and living conditions. Such a situation is unsustainable. There is therefore a great need for local government to be involved in seeking and implementing solutions to the dilemma.</p> <p>XI. Oh Housing and living Conditions, obviously housing subsidies are or will be part of the employment packages offered to employees. SACCI trusts that the beneficiaries will be treated by SARS in the same way as those in other organisations where similar benefits are considered taxable fringe benefits.</p> <p>XII. SACCI believes it will be onerous qualifying small enterprises that have a metal usage value of 1,5kg – 5kg per annum at a value of R1million to R3,8 million to comply with the procurement, employment equity and human resource development requirements if the company is not owned by black people.</p> <p>XIII. While the charter requires 100% compliance at all times and ring fences these elements, and while the mining company can provide the housing and good living environment, it cannot, and should not be required to, interfere with the private lives of employees in order to ensure that the facilities are kept in good condition.</p>	<p>X The department agrees with the suggestion and supports Integrated and sustainable mine community development.</p> <p>XI the Department agrees.</p> <p>XII. The Regulator to advise on exemption of these qualifying small enterprises.</p> <p>XIII There Charter does not have a requirement to interfere with private lives of employees.</p>
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		<p>XIV. SACCI notes that mining rights holders must align existing target cumulatively from the mining charter 2014 within three years to meet the revised target. SACCI queries what is meant by "cumulatively".</p> <p>XV. SACCI calls for all extenuating circumstances to be taken into account when compliance is considered. The sanctions provisions in the MPRDA are substantial and if applied have the potential to bring a mining company to its knees. They could also have a damaging impact on South African mining sector, and therefore on South Africa, as a desirable investment destination. South Africa desperately needs investment, and everything possible should be done to encourage it.</p> <p>XVI. SACCI believes that the reviewing of the charter by the Minister of Mineral Resources as and when the need the need arises could lead to uncertainty in policy. One of the main deterrents to investment is policy uncertainty. Business needs to know what will take place and when. SACCI proposes that in order to improve predictability, a time frame should be defined such as every five years.</p> <p>XVII. While the Charter shows a firm stance on an obligation of mining companies and their suppliers to cut down on debt incurred by employees and the issuing of garnishee orders, SACCI points out that neither mining companies nor their suppliers should be held responsible for debt incurred by employees.</p> <p>XVIII. SACCI is concerned that the draft charter was published without prior consultation with stakeholders. SACCI fears that there could be a backlash from mining communities given the strong stance and vociferous demands that they be included in decisions relating to mining operations that they made in the Berea Declaration – the Declaration by the Coalition on the</p>	<p>XIV It means progressively.</p> <p>XIV. Clause 2.9 states that the Department shall monitor and evaluate implementation of the Charter taking into account the impact of material constraints which may result in not achieving the targets.</p> <p>XVI The Department will consider prescribing the review timelines to create regulatory certainty.</p> <p>XVII. The Charter does not create any obligations for mining right holder and suppliers to take up employee's debt.</p> <p>XVIII The Charter was gazetted to solicit public views and the Department is open to further meaningful and progressive engagements on the Charter.</p>
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	MPRDA – 26 March 2015 Berea Johannesburg. The industry can ill-afford any repercussions from communities.	
8. Anglo American Mining	<p>i. in respect of mining rights contained in section 2(g) of the MPRDA, it is essential that the of the Reviewed Mining Charter apply retrospectively to Existing Mining Rights with the view to withdrawing the relevant provisions from the Reviewed Mining Charter; and unequivocally and explicitly confirming in the Reviewed Mining Charter that the ownership requirements set out in paragraph 2.1 of the Reviewed Mining Charter are not applicable to Existing Mining Rights.</p> <p>ii. The principle of "transformation in a sustainable manner" is also eroded by the proposals in sub-paragraphs (a) – (i) of paragraph 2.1 of the Reviewed Mining Charter which prescribe a "one-size-fits-all" empowerment structure in respect of each mining right in order to achieve the ownership target. No regard is given for the circumstances relevant of a particular mining company or its empowerment partners, or the fact that this prescribed model may in some instances constrain the extent to which the transformation objectives of the mining industry can be achieved by that mining company.</p> <p>iii. The requirement of a minimum target of 26% ownership by Black People per mining right in paragraph 2.1(a) has the effect of unfairly and irrationally excluding BEE mining companies that have any level of direct or indirect participation by persons other than Black People from participating in empowerment transactions ignoring Indirect participation by Black People in mining companies; and ignoring the Indirect participation of Black People via pension funds and collective investment schemes.</p> <p>iv. The requirement for a guaranteed dividend flow to the empowerment partners throughout the term of the investment in order for there to be "meaningful economic participation" of</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.</p> <p>ii. The Department notes the submission and will reconsider the type(s) of vehicles to be used to effect transformation. However the minimum 5 % allocation each to communities, ESOPs and</p>

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		<p>Black People in a mining company is commercially unsound and ignores the provisions of the Companies Act, which prescribe the basis upon which a company may legally and validly make distributions to its shareholders.</p> <p>V. The requirement for a minimum 5% holding by certain categories of shareholders in sub paragraph (b) of paragraph 2.1 of the Reviewed Mining Charter is unlikely to be appropriate under all circumstances and once again ignores the commercial realities and differing circumstances of both mining companies and BEE parties.</p> <p>VI. The presumption that it is always optimal and correct that empowerment partners participate in a single structure; and empowerment partners with differing interests can nevertheless always speak with a single voice will in many instances unreasonably and unfairly restrict the meaningful participation of Black People in empowerment structures.</p> <p>VII. We note that the Reviewed Mining Charter no longer provides for the continued recognition of empowerment transactions concluded prior to the promulgation of the MPRDA in calculating offsets against the ownership target, which was permitted under the Original Mining Charter and is presently permitted in the Current Mining Charter. Albeit for a prescribed period, the recognition for the conclusion of previous transactions is provided for under the DTI Codes and we can see no justifiable basis for the deletion of this provision from the Reviewed Mining Charter.</p> <p>VIII. Furthermore, we note that the Reviewed Mining Charter does not provide for the recognition of disposals by mining companies which have resulted in the transfer of a mine or an interest in a mine to HDSAs or Black People. We can see no justifiable basis for such transactions not to be recognised for purposes of an offset against the ownership target. We respectfully request that</p>	<p>Entrepreneurs will be maintained to ensure broad based and meaningful transformation of the mining industry.</p> <p>III The objective of the Charter is to achieve direct, meaningful and effective participation by Black People in the mining industry.</p> <p>IV The Charter does not require a guaranteed dividend flow to the empowerment partners but requires that whenever a dividend is due part must service the debt and the other part should serve as cash flow to BEE partners.</p> <p>V The 5% minimum is to give effect to the notion of broad based and meaningful transformation of the industry.</p> <p>VI. The differing positions of parties will be resolved through an agreed MOI between the SPV parties which includes a dispute resolution mechanism.</p>
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	<p>this be considered by the Minister with a view to including the appropriate provisions in the Reviewed Mining Charter together with a calculation methodology to facilitate the measurement of the offset.</p> <p>IX. As far as we are aware, the proposals made in paragraph 2.1 of the Reviewed Mining Charter are not supported by a Regulatory Impact Assessment which justifies and balances the need for additional and substantial cost to be incurred by mining companies in order to meet the ownership requirements, and the impact that such cost will have on the furtherance of the transformation objectives. Furthermore the proposals are not underpinned by an assessment of the long-term impact on the sustainability of mining companies or of the viability of such measures to ensure that the mining industry remains globally competitive. We believe that the category-based procurement targets in paragraph 2.2 of the Reviewed Mining Charter do not successfully drive transformation, local economic upliftment or job creation as they have been proposed in an unclear manner and seemingly without regard for their impact on the mining industry and the stakeholders who are intended to benefit from the setting thereof.</p> <p>X. The targets do not recognise the development by mining companies of small businesses into sustainable high-revenue businesses, but rather promote the unsustainable rotation of suppliers. This is contrary to the national economic development aims of local industrialisation and job creation, as well as the national transformation objectives. To illustrate this point, if a mining company has developed a small business in the past, once such a business reaches a certain threshold a mining company is inadvertently prevented from continuing to support such a business because it will need to redirect its spend to as smaller business with a lower threshold. This is counter-productive and is contrary to the objective of growing black industrialists.</p>	<p>VII. 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.</p> <p>VIII. See point VII above.</p> <p>IX. The Department has done a detailed SEIAS (a cost benefit analysis) with the support of DPME.</p> <p>X. Dtd to advise on supplier development (Measurement and scorecard).</p>
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			XIV No.	
XIV.	It is not clear if the definition of "locally manufactured" in respect of capital goods is meant to apply to all areas of capital expenditure. For example, would capital project expenditure to build infrastructure be recognised?		XV The Department will consider measuring all targets (small business, enterprise development etc). Transformation is Government's policy imperative and fall under the WTO exceptions. (Dti to further advise).	
XV.	The targets and metrics in paragraph 2.2 of the Reviewed Mining Charter have not been fully translated under the scorecard for the Reviewed Mining Charter for measurement purposes. For example, the scorecard does not provide for reporting of spend towards small businesses or spend reserved for enterprise development. We are concerned that the proposed imposition of targets in respect of local content for capital and consumable goods and, to some extent, services may place South Africa at risk of being in violation of its International trade law obligations.		XVI The Charter provides for Ministerial Consent for exemption on a case by case basis.	
XVI.	The proposed requirement that mining right holders utilise South African facilities for the analysis of 100% of each mineral sample (unless consent is secured from the Minister) is impractical. In many instances, global standards require samples to be tested independently in specific laboratories outside of South Africa, and it is standard practice for grading analyses to be conducted in respect of exported minerals prior to them being offloaded in a different country.		XVII The Department will create mechanisms to ensure that trust funds are implementable and managed within the prescripts of the law.	
XVII.	In relation to the proposed target regarding multinational suppliers contributing 1% of annual turnover generated from local mining companies into a Social Development Trust Fund, we are concerned that the target will unreasonably penalise locally-based multinationals, and will deter them from investing in developing manufacturing capabilities in South Africa. Additionally, the target will inevitably be factored into supplier pricing, translating to an additional cost for mining companies and, therefore, further impacting profitability and sustainability of mining companies.		XVIII The Department will create mechanisms to ensure that trust funds are implementable and managed within the prescripts of the law.	
XVIII.	The levies proposed for Social Development Trust Fund need to be considered, and the Implementation thereof developed, in consultation with National Treasury to the extent that such			

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	<p>a consultation has not already taken place. Until such time as the requisite processes have been concluded and the necessary legislation passed, multinational suppliers cannot be obliged to make contributions to the proposed Social Development Trust Fund.</p> <p>XIX. As with the Original Mining Charter and the Current Mining Charter, the Reviewed Mining Charter does not provide guidance on how Beneficiation should be quantified, and as such how this might be translated into a percentage offset.</p> <p>XX. Similar to health and safety (which is regulated by the Mine Health and Safety Act) and environmental management (which is regulated by, amongst others, NEMA) employment equity is regulated by the Employment Equity Act. Furthermore, similar to the Mine Health and Safety Act and NEMA, non-compliance under the Employment Equity Act is subject to the levying of a severe penalty by the Department of Labour. We therefore have difficulty in understanding the need to duplicate this compliance function in the Reviewed Mining Charter and believe this to be unnecessary and irrational.</p> <p>XXI. The proposed 1% of annual turnover target to be contributed towards local community development and labour sending areas would be unachievable for the mining industry and would further weaken the sustainability of mining operations, placing current employment levels and transformation initiatives at risk.</p> <p>XXII. As the performance of mining companies against the commitments made in relation to community development is already monitored in SLPs, we believe that the DMR is creating an unnecessary duplication of functions in seeking to impose obligations in relation to mine community development that must also be complied with in the Reviewed Mining Charter. It would be more appropriate for the Reviewed Mining Charter to provide a framework for how</p>	<p>XIX Mr Menoe to advise.</p> <p>XIX. Employment Equity is not a preserve of the Department of Labour, the DMR as part of government collective has a contributory role to play in addressing the historical imbalances in the mining industry.</p> <p>XXI The 1 % will be maintained as it is a uniform percentage applying to all operations irrespective of the size and nature of the operation.</p> <p>XXII The Department will reconsider the relationship between the SLP and the Charter as different legislative requirements to ensure alignment and removal of ambiguities.</p>
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	<p>mine community development can be achieved in accordance with the provisions of the SLP attached to the mining right.</p> <p>XXIII. It is unclear whether "local community" is intended to refer to "mine community" as defined in the Reviewed Mining Charter. However, assuming that it does, this definition is not sufficiently clear to enable a mining company to determine what its obligations are under this proposal. For example, would a "local community" be the community that falls within the local municipality in which a mining company operates, or is it only that portion of a community that falls within a certain radius of the mining company's operations? We propose that this not be defined for all mining rights in the Reviewed Mining Charter, but that it be determined per mining right and included in the associated SLP.</p>	XXIII Noted, the Department will reconsider aligning the definitions.
	<p>XXIV. The term "labour sending areas" read together with the requirements under paragraph 2.6 of the Reviewed Mining Charter, require mining companies to contribute to developing areas within the entire Southern Africa, and not just within the borders of South Africa. This requirement would exceed what is envisaged under sections 100(2)(a) and (b) of the MPRDA and we assume that this is not the intention of Government.</p>	XXIV Noted, the Department to provide a response later.
	<p>XXV. It is unclear whether the provisions of paragraph 2.7 of the Reviewed Mining Charter are intended to replace those under the Housing Standards. It is further unclear which of these documents is to take precedence in the event of a conflict between the provisions if the provisions of the Housing Standards are intended to continue to apply.</p>	XXV The Department will reconcile the documents to ensure alignment.
	<p>XXVI. For the avoidance of doubt, our representations in respect of the proposed retrospective application of the ownership requirements under the Ownership element apply equally to any proposal to retrospectively impose the ownership requirements on existing licences or permits</p>	XXVI The submission on thresholds is noted and The Department acknowledges the presumption against retrospective application

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		<p>issued in terms of the Precious Metals Act or Diamonds Act (whichever is applicable). The thresholds applicable to the diamond industry need to be clarified as this is not immediately clear from the table on page 10 of the Reviewed Mining Charter</p> <p>XXVII. We would like to highlight certain commercial considerations relating to industries regulated by the Precious Metals Act below which make the imposition of targets of the Reviewed Mining Charter impractical and, in many instances, commercially unachievable:</p> <ul style="list-style-type: none"> the majority of the processing undertaken for third parties within the refineries in Anglo Platinum are undertaken for BEE producers without their own facilities thereby eliminating a commercial barrier; the configuration of a refinery is primarily specific to the producer who commissioned it and is not always suitable for third parties given the specialised nature of processing operations. It is therefore not always a commercially viable investment for a BEE partner In many instances, as is the case for Anglo American Platinum, there is no external market for the processed product produced in the volumes produced by Anglo American Platinum. The vast majority is processed for the Anglo American Group and its joint venture partners; refineries and processing plants are capital intensive and have a low level of return, therefore empowerment ownership is not always optimal because of high capital required and low returns made on such investments; and increasing energy costs make BEE investments into processing assets on a stand-alone basis unattractive. 	<p>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.</p> <p>XXVI Noted, the submission to be discussed with the SADPMP.</p>
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3. Bulelani Mkonto		<p>XXVIII. Section 100 of the MPRDA does not authorise the Minister to extend the scope of sections 47, 93, 98 or 99 of the MPRDA as the Reviewed Mining Charter seeks to do. Furthermore, the provisions of the MPRDA do not empower the Minister to revisit his decision to grant a mining right with a view to suspending, revoking, cancelling or terminating it on the basis of non-compliance with the provisions of the Reviewed Mining Charter.</p> <p>XXIX. We note that the Reviewed Mining Charter contains very little guidance in paragraph 2.9 as to the methodologies to be applied by mining companies when determining their performance against the targets in the Reviewed Mining Charter for the purpose of reporting on this to the DMR. We would welcome a discussion with the DMR to develop such methodologies once the concerns we have raised in our Submission have been considered.</p>	<p>XXVII Compliance with the requirements of the Charter is a material terms and conditions of a mining right. The term "this Act" is defined to include any regulation and terms and conditions of a right granted in terms of the Act. The powers to amend the Charter is implied from the powers conferred on the Minister in terms of section 100 (2) (a) to develop the Charter.</p> <p>XXIX The submission is noted, the Department will consider development of a guideline.</p>
		<p>i. I just want to state it clear that the black community would like far more than 26%. Black people are approximately 89% of the population, Coloureds, Indians and Whites sharing the remaining 11%. That means that should be the percentage you should make amendments in proportion to. 26% is an insult to our democracy- because democracy means the majority shall rule, however your Department of Mineral Resources, is counter-revolutionary.</p> <p>ii. Your department should learn alot from the SABC....we want 90% across the board. That mean in terms of ownership, skills development, enterprise development, black representation at executive level and black representation on all boards (directorship), organisations, charters and councils.</p> <p>iii. I wish our concerns will be considered by you! We demand 90% and not 26%. Thank you for being conscious driven.</p>	<p>i. The suggested 26% is a minimum, there is nothing that precludes a mining company from going beyond this minimum target. The Department is open to alternative proposals to help drive meaningful, broad based Black Economic transformation.</p> <p>ii. See point i above.</p> <p>iii. See point i above.</p>

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10. AFRISAM	<p data-bbox="295 795 582 1724">i. AfriSam recommends that the Ownership element be reserved until judgment has been reached on the Declaratory Order (on the "once empowered, always empowered" issue). It seems likely that companies will lock-in BEE partners for the life of mine to safeguard the 26% and (which in AfriSam's view goes against equity and empowerment). In AfriSam's view, new acquisitions should retain the 26% ownership requirement. AfriSam requires clarity on what the implications will be if the BEE partner in question exits prior to the end of a particular assessment period, and cannot be replaced prior to the end of that assessment period.</p> <p data-bbox="598 795 750 1724">ii. The creation of trusts provisions, in AfriSam's view, create an additional administrative burden on the mining right holder in respect of the registration and administration of the trusts to be created and may also lead to additional costs. Who will be responsible for the administration of the Trusts (that is, the SPV or the mining right holder)?</p> <p data-bbox="766 795 869 1724">iii. In AfriSam's view, the empowerment transaction should only be at Group level. In AfriSam's view, Ownership ought to be consolidated at Group level, as opposed to "per mining right". This will avoid the unbundling and the resultant different ownership structures.</p> <p data-bbox="885 795 957 1724">iv. AfriSam requires clarity on "consolidation." Does this mean the consolidation of all transactions at Group level?</p> <p data-bbox="973 795 1077 1724">v. AfriSam requires clarity on the status of the Public Investment Corporation SOC Limited (representing the interest of the Government Employees Fund) as a major shareholder having regard to its status as a BEE Facilitator in terms of the B-BBEE Act.</p> <p data-bbox="1093 795 1165 1724">vi. BEE transactions are in our view rather complex (especially where third party financing is required) and finalising such transactions within 3 (three) years seems in our view not be practical.</p>	<p data-bbox="295 324 654 672">i. The Department acknowledges the court case but the Minister is not precluded from exercising regulatory powers as conferred by the legislature. The BEE transactions should be structured in such a manner that exit and entry of BEE partners occurs simultaneously.</p> <p data-bbox="670 324 901 672">ii. The trusts will be created and registered by the Trustees of the respective empowered BEE partners. The concern regarding the costs and administrative burden will be carried by the trust.</p> <p data-bbox="917 324 1029 672">iii. The concern is noted and the Department must formulate a position (Mr Mabuza).</p> <p data-bbox="1045 705 1069 784">iv Yes.</p> <p data-bbox="1085 582 1109 784">v The Dtl to advise.</p> <p data-bbox="1117 324 1189 784">vi the Department disagrees, the 3 years transitional period is sufficient.</p>
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VII.	On capital goods, the requirement for 30% reservation for SME's and a further 10% for ED is onerous on AfriSam, due to the type of capital goods purchased by AfriSam. Most are engineering equipment manufactured to specifications or imported.	VII The Department to consider introducing a provision for exemptions with the Ministers consent to import the requisite equipment.
VIII.	On consumables, The requirement for 30% reservation for SME's and a further 10% for ED will be very onerous upon AfriSam.	VIII Refer to point VII above.
IX.	What form of local content verification would be acceptable and how is this proof to be submitted, and will a supplier's statement of SABS compliance be adequate?	IX The statement will not be sufficient, the Department requires a certificate of the extent of local content from the right holder as provided by the supplier.
X.	AfriSam does not support the Multinational supplier contribution of 1% turnover and instead propose 1% Net Profit after Tax (NPAT) as per the previous Charter.	X Treasury has advised that turnover is the suitable option.
XI.	AfriSam will require clarity on the tracking Social development Trust Fund. That is, will the DMR track this requirement, or will the onus be on AfriSam to advise the DMR? AfriSam notes further that the Trust Fund has not been set up by the DMR to date. Further, if no trust fund is set up, can companies create a fund and utilise the money for SED?	XI The Department maintains the 1% turnover and will develop the necessary tools to create the trust to implement same.
XII.	It would be preferable for DMR to develop guidelines on how the off-setting of 11% of the shares towards beneficiation will be calculated and measured. For example, will the DMR requirements/calculation for beneficiation be the same or different than the royalty tax calculation? It would also, in our view, be preferable for beneficiation to be calculated at a Group level (and not at the level of each mining right holder	XII Mr Menoe to advise.
XIII.	On Employment Equity, In relation to AfriSam's current Board position, 50% are black people and 33% are black females. However, an increase of 25% in target does not, in AfriSam's view, seem realistic from an industry perspective, and it may be challenging for AfriSam to sustain this target percentage.	XIII The said compliance levels are commendable, the increase of 25 percent can be progressively realised within the 3 years transitional period.

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		<p>XIV. In relation to Afrisam's current Exco and SML position, 38% are black employees and 20% are black females. An increase of 50% in target does not, in Afrisam's view, seem realistic. In Afrisam's circumstances, the targets will be a challenge to meet, especially in this employment category due to low staff turn-over at both Exco and SML Levels. The slightest turnover of black employees in this level will have a huge negative impact (for example, YTD Afrisam has had a 3% turnover in black employees in the SML and this has resulted in a major drop with regards to representation). The targets are especially challenging due to the industry in which Afrisam operates being in decline (which makes it especially difficult to attract and retain black female employees). The inclusion of provincial EAP targets will be another challenge to Afrisam, as we operate in different provinces, and the use of national EAP targets may make it even more difficult for Afrisam to achieve these targets. In particular, attracting engineers to the industry in which Afrisam operates is challenging due to the competition for these scarce resources.</p> <p>XV. In relation to Afrisam's current Middle Management position, 45% are black employees and 36% are black females. An increase of 88% in target does not, in Afrisam's view, seem realistic.</p> <p>XVI. In relation to Afrisam's current Junior Management position, 58% are black employees and 16% are black females. A 120% increase in target, in Afrisam's view, does not seem realistic.</p> <p>XVII. On Human Resources Development, the minimum target for Skills Development as contained in the revised BBBEE Codes is 6%. In our view, 6% therefore should be the target. In addition, the stated 5% in the Mining Charter, 2015 is in line with the previous Mining Charter targets. In Afrisam's view, alignment between the BBBEE Codes and the Mining Charter is important in order to ensure that companies can record their full investment into Skills Development. Afrisam is of the view that 5% of annual payroll on core and critical skills, bursaries and learnerships. Afrisam</p>	<p>XIV refer to point XIII above.</p> <p>XV refer to point XIV above.</p> <p>XVI refer to point XIV above.</p> <p>XVII To confirm with Dti whether their 6% includes or excludes the mandatory 1% Skills levy. The concern about the 15% per cent of the 5 percent is noted.</p>
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<p>does not, however, support the 15% stipulated as it is an addition to the 1% skills levy that is already paid to the National Skills Fund. In effect, only 0.25% annual payroll will go towards upskilling of employees.</p> <p>XVIII. On Mine Community development, AfriSam will require clarity on whether this requirement is per mining operation. AfriSam is of the view that this requirement ought to be assessed on a corporate level and be allocated (perhaps based on revenue) to each mining operation.</p> <p>XIX. On Housing and Living Conditions, the affordability aspect in relation to AfriSam subsidising its employees' purchase of houses is a concern. In addition, AfriSam is not in support of the suggestion in relation to guarantees.</p>		<p>XVIII The suggestion is noted, the Department to formulate a position.</p> <p>XIX The Department disagrees.</p>
<p>11. Association of Black Securities and Investment Professionals (ABSIP)</p>	<p>General, Ownership, Reporting</p>	<p>i. To place more emphasis on BBDEE (rather than BEE alone) we believe that additional incentives or credits should be given to broad based employee, broad based community schemes and the percentage of Black peoples' proportionate share held via retirement funds. Mining companies should be encouraged to look through retirement funds ultimate beneficiaries for BBDEE ownership. Black People and Black Women are slowly holding a greater proportion of retirement funds assets. This will in the longer term contribute to a significant reduction in the inequality gap in South Africa.</p> <p>ii. ESOP's and Community Trusts must be represented by fiercely independent fiduciaries that will look after the interests of a broad base Black People who are the intended beneficiaries.</p> <p>iii. The mining charter should also place explicit obligations on mining companies and its suppliers on reducing the amount of emolument attachment orders ("garnishee orders") of its employees and contract workers that may have been obtained by less than acceptable ethical practices.</p> <p>i. The Department does not regard Black people's participation in the retirement funds as meaningful transformation within the Charter context.</p> <p>(ii) The Department agrees.</p> <p>(iii) The Department would support interventions by mining companies and their supplier to assist their debt trapped</p>

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

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		<p>III. There are community calls for effective and independent grievance mechanisms for rights violations and failure to meet social obligations by mining companies and an independent capacity development fund to assist communities in accessing the economic planning, ecological and legal (etc) knowledge enabling communities to make informed decisions and participate in decision-making on an equal footing with companies.</p> <p>IV. The draft Reviewed Mining Charter, under the 'mine community development' section provides that mining companies contribute 'a minimum of 1% of their annual turnover to towards local community development and labour sending areas. Reading the draft Charter does not yield certainty as to whether this 1% is to constitute SLP expenditure or is required over and above SLP expenditure. If the former interpretation is correct, the use of actual (as opposed to projected) turnover is problematic as lower than projected turnover could result in SLP expenditure being revised downwards.</p> <p>V. There is no reference at all to SLPs in the draft reviewed mining charter. We therefore call for the clarification, in legislation and policy, of the respective roles of the Charter and SLP systems and for their alignment.</p> <p>VI. In CALS' preliminary research on the implementation of the SLP system, a persistent theme echoed across a variety of role players in community organisations, local government and in the mining sector is of a lack of effective communication and co-ordination. The draft Reviewed Mining Charter does not indicate the mechanisms for co-ordination or provide guidance on how this should be achieved. In this regard, the development of a new Charter represents a missed opportunity.</p> <p>VII. The Charter does not recognise the need to compensate for environmental losses as a result of mining. The lack of attention to environmental justice is also reinforced by the removal of sustainable development from the objectives of the Charter.</p>	<p>are just minimums and a mining operation is not precluded from going beyond the stated minimum percentages.</p> <p>III. Communities are welcome to approach the Department for assistance with the challenges regarding mining operations.</p> <p>IV. The Department will consider reconciling the Charter and SLP to remove any ambiguities. The 1% is intended to create certainty and the Department supports actual expenditure.</p> <p>V. The Department will consider reconciling the Charter and SLP to remove any ambiguities.</p> <p>VI. Refer to point V above.</p> <p>VII Compensation is regulated in terms of section 54 of the MPRDA read with NEMA and MHSA. The Department will consider</p>
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		therefore critical that democratically elected community organisations should also be accorded a right to be represented on the board. It is critical that communities are able to choose their representatives.	
	XII.	The draft Reviewed Mining Charter represents an improvement in that there are gender specific targets (for black women) representation at various levels of the company. It is not clear whether the targets refer to the percentages of the share of the positions to be held by black people or a percentage of all positions. If the former is the case, these targets are very low. For example, the draft Reviewed Mining Charter provides for a minimum of 50% Black executive directors, '25% of which must be black female.' The literal meaning of this would be that 25% of 50% of executive directors are to be black women, i.e. 12.5%. This would be a very low target. The other interpretation would be 25% of directors would be black women.	XII The submission is noted, the Department will rework the wording and percentages used.
	XIII.	The Amended Charter still fails to respond to the manner in which the externalised costs of mining fall predominantly on women. These costs include the loss of economic autonomy, where many women in rural areas lose access to arable land. Where agriculture is replaced by mining, relatively few women, in practice, are employed on the new mines with the result that the economic marginalisation of women is exacerbated.	XIII. The MPRDA provides for compensation in terms of section 54.
	XIV.	Further the Charter does not address barriers to the advancement of women in the workplace. It does not provide for measures to address harassment and gender-based violence on mines. It does not set a deadline for all mines to have equipment for women, separate bathrooms and sanitation needs for women. It does not require a timeframe for on-site childcare facilities for parents working on the mine.	XIV This is addressed in the Mine Health and Safety Act, 1996.

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13. GOLD ONE GROUP LIMITED	General	The Draft Mining Charter 2016:- I. is a nullity in law, II. Retrospective in its application, therefore a violation of the rule of law and the principle of legality, thus violating section of the Constitution. III. An arbitrary deprivation of property, thus violating section 25(1) of the Constitution. IV. Prescriptive regulatory instruments unjustifiably interfering with commercial agreements. V. Impacts negatively on foreign direct investments thereby negating some of the objects of the MPRDA.	<p>(i) The Department does not agree, the Charter derives from section 100(2) of the MPRDA and gives effect to its objects in section 1 and the requirements of section 23.</p> <p>(ii) The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the Agrisa Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.</p> <p>(iii) See point ii above.</p> <p>(iv) See point ii above.</p> <p>(v) See point ii above.</p>
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14. South Africa China Economy and Trade Association (ISACETA).	General, Transitional period, Procurement, Ownership,	<p>i. The Charter gives the Minister to broad a discretion to amend it as and when the need arises, it would be preferable if the requirements of the charter were to be incorporated in the principal Act and thus only amendable through the normal legislative process.</p> <p>ii. The three year transitional period is inadequate.</p> <p>iii. We are happy to comply with the procurement provisions provided that there are sufficient local companies to procure from, in the absence of such companies we recommend that exemption be granted to companies to source good offshore.</p> <p>iv. Instead of the requirement of 1% on Multinational Companies we suggest that mining companies be offered tax incentives to procure locally.</p> <p>v. The 1% levy on turnover is unaffordable in the current investment climate.</p> <p>vi. The charter must impose an obligation on BEE entities to only exit empowerment transactions by selling to other BEE entities.</p> <p>vii. The requirement of an empowerment transaction per mining right is impractical, in that a company with 10 mining rights would have to enter into 10 empowerment transactions.</p> <p>viii. It gives rise to difficulties to force BEE parties (communities, workers and entrepreneurs) into one SPV.</p> <p>ix. The Draft Charter is retrospective and thus unconstitutional for violating the rule of law.</p>	<p>i. The Department does not agree, the Charter derives from section 100(2) of the MPRDA and gives effect to its objects in section 1 and the requirements of section 23. The Department will consider prescribing the review timelines to create regulatory certainty.</p> <p>ii. The Department disagrees, the 3 year period is sufficient to allow for progressive/cumulative transition into the new dispensation.</p> <p>iii. The Department will consider providing room for exemptions with prior written consent of the Minister.</p> <p>iv. The determination of tax incentives is competency of National Treasury. The Department will keep the 1% from Multinationals and create the</p>
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			<p>requisite mechanisms for implementation.</p> <p>V. The Department notes the submission. Clause 2.9 of the Charter addresses this challenge.</p> <p>VI. The Department notes the submission and will address it in the review exercise.</p> <p>VII. The Department notes the submission and will address it in the review proposals.</p> <p>VIII. See note VII above.</p> <p>IX. The Department acknowledges the presumption against retrospective application of the law. This presumption is not absolute (refer to the Agrisa Case). The Charter proposes mechanisms in the form of transitional arrangements to deal with the retrospective effect. The Charter derives from section 100 and cannot be said to be ultra</p>
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15. Institute of Race Relations (IRR)	General, Ownership, Procurement, Employment Equity, Human Resource Development, Mine Community Development, Housing and Living Standards, Scorecard	<p>I. The use of the concept "Black People" also contrary to Section 9 of the Bill of Rights, which bars any form of racial discrimination by either the state or private persons.</p> <p>II. When BEE investors 'exit' an ownership deal, a mining company must do whatever additional deals might be needed to keep BEE ownership at 26% overall (and at 55% for each of the three categories of BEE beneficiaries identified in the draft charter). These obligations will require mining companies to keep diverting scarce capital into ever more ownership deals, which in turn will inhibit the sustainability and development of many mines.</p> <p>III. Requirements to set up and establish trusts for employee and community stakes in particular ways will add to compliance costs, both direct and indirect. Having to establish an SPV for each BEE transaction will also be complex and costly, and will have major tax implications which seem not to have been considered. Already, the financing of a BEE deal costs some 30% of the total amount, and the additional complexity required under the draft charter is likely to add significantly to these costs.</p> <p>IV. Particularly damaging is the demand that all mining rights holders should re-do all the BEE ownership deals they have already concluded so as to bring them into line with the new requirements. Retrospective rule-making of this kind is contrary to the rule of law. Yet the Constitution stresses the 'supremacy' of the rule of law and makes it clear that it cannot simply be ignored.</p>	<p>vires the Act, it gives effect to the objects of the Act (meaningful transformation) and section 23 and 100 of the Act.</p> <p>I. Section 9 (2) allows for positive discrimination meant to redress the past imbalanced. The objects of the Charter are to give effect to this provisions.</p> <p>II. The Department disagrees, the intention is for mining companies to have 26% BEE transaction in place for the life of the mine. If a BEE partner exists it must be replaced with another BEE partner or if it sells it must sell to another BEE partner or to the Empowering Company.</p> <p>III. The Department will reconsider the proposed SPV model taking into account alternative models. Trusts will also be reconsidered in</p>
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V.	Many of the draft charter's provisions in this sphere are also vague and difficult to interpret. This further contradicts the rule of law, which requires that laws and regulations be certain and precise. What does the draft charter mean, for instance, when it says that mining rights holders must 'consolidate the empowerment transactions' (see Clause 2.1(i))? And what does it mean when it states that 'the mining rights holder must...review its empowerment credentials', in the final paragraph of Clause 2.1? The wording of the draft charter provides no clear answer.	IV. 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.	
VI.	On procurement, the increase from 40% to 60% for capital goods is a major shift, which may not be realistic and could add significantly to input costs, as many local manufacturers are less competitive than global ones. The expectation that 30% of this 60% should come from small businesses is particularly unreasonable.	V. The current wording of the Charter will be refined to provide clarity.	
VII.	The DMR should be wary of imposing additional financial burdens on multinational companies with a wide range of faster-growing countries in which to operate. The international trade law implications of the provision imposing a 1% levy on turnover of multinational companies generated from South African mining companies are significant and seem to have been overlooked.	VI. The Department will maintain the current percentages/targets.	
VIII.	The targets on the Employment Equity Act of 1998 (the EE Act) on which they are based, assume that, because black South Africans make up 77% of the economically active population (EAP), they should make up 77% of executive, senior, and middle managers too. But the EAP includes all those between the ages of 15 and 64 who either work or wish to be employed. Given the youthfulness of the black population – more than half of black people are under the age of 25 – the EAP includes many black teenagers who have never obtained a matric or worked at any job at all.	Consideration will be given to provide for exemptions with Ministerial consent in respect of Capital goods imports. The Charter also provides for supplier	

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		<p>By contrast, executive, senior, and middle managers must have appropriate experience and skills. In 2015, only 40% of blacks fell within the 35-64 age cohort that might be considered eligible for such management posts. In addition, though degrees or diplomas are often necessary or advisable for such jobs, only 5% of the black population then held any kind of tertiary qualification. This means that the pool of black people from which such managers can realistically be drawn is far smaller than the draft charter assumes.</p> <p>IX. On Core and Critical Skills, the draft charter adds that mining rights holders 'must ensure that a minimum of 40% black people are represented in the mining company's core and critical skills by diversifying their existing pools. To this end, it says, the rights holder must 'identify and fast track their existing pools', while 'the abovementioned fast tracking of pools must be a proportional representation of the workforce'. These requirements, particularly the last one, are so badly phrased as to be virtually unintelligible.</p> <p>X. On Human resource development, the draft charter requires the mining industry to 'invest 5% of annual payroll' in essential skills development activities, 'such as artisanal, bursaries, literacy and numeracy' (sic). It indicates that this allocation must be 'reflective of the proportional representation' (sic). Again, this provision is poorly drafted and difficult to understand. Mining companies should have the choice of spending the full amount of the levy on in-house training, or support for academic institutions, both of which are likely to be more effective in meeting their training needs.</p> <p>XI. The target of 1% on turnover for mine community development should be based on net profit after tax, rather than on annual turnover.</p>	<p>development by the mining right holder.</p> <p>VII. The Department disagrees the 1% requirement from Multinational suppliers to be retained and implementation tools provided.</p> <p>VIII. The Department of Labour to assist with verification of the figures.</p> <p>IX. The wording of the Draft Charter will be refined to provide clarity.</p> <p>X The Department disagrees the requirements of tis element are clear and will be maintained.</p> <p>XI Treasury has advised that turnover is the appropriate text to use in this instance.</p>
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<p>XII. The draft charter fails to recognise the difficulties that mining companies may have, in practice, in helping to provide employee housing where the necessary land or infrastructure has not been made available by municipalities or other organs of state.</p> <p>XIII. It is unreasonable to expect companies to maintain 100% compliance with costly housing and skills development obligations during periods of limited or no profitability.</p> <p>XIV. Given the magnitude of the increases in many of the targets, a three-year transitional period is far too short.</p> <p>XV. The scorecard provided in the draft charter is also intrinsically vague. Though each target is supposedly now to be weighted, and each mining right holder will earn a score between 0 and 100, the scorecard does not set out the points attainable on each element. Thus, though it identifies 26% as the 'minimum target for HDSEA (sic) ownership', it does not say how many points mining companies will score for meeting this target. Likewise, it sets out the targets for procurement on capital goods, consumables and services, but it does not say how many points will be available for full (or partial?) compliance with this element. This makes it impossible to determine how points will be allocated, which in turn makes it impossible for scores to be computed.</p>	<p>XII The Department supports integrated development (co-operation with local government and municipalities) and its doors remain open at all times to address challenges experienced by mining operations in delivering on their transformation commitments.</p> <p>XIII Clause 2.9 states that the Department shall monitor and evaluate implementation of the Charter taking into account the impact of material constraints which may result in not achieving the targets.</p> <p>XIV The Department disagrees the proposed 3 years transitional period is sufficient for progressive realisation of the charter targets.</p> <p>XV The Draft scorecard will be revised to address the identified loopholes. (Mr Menoie to assist).</p>
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		<p>XI. If mineral sampling are to be done by South African companies the ministerial approval process must be simplified.</p> <p>XII. The requirement of 50% black representation at board level is unacceptable.</p> <p>XIII. The demographics of where the mine is situated must be used.</p> <p>XIV. The 5% on turnover to be used for human resources development is simply unaffordable.</p> <p>XV. The 1% on turnover for community development is also unaffordable and a duplication since the community will have shares in the operation.</p> <p>XVI. The prescriptions on housing and living conditions are vague and unclear.</p> <p>XVII. The three year transitional period is too short.</p> <p>XVIII. The concept of ring fenced elements is disturbing since 100% compliance at all times is impossible.</p>	<p>vi. Union representation is a more structured and formal forum for worker representation.</p> <p>vii. Mr Menoe to advise.</p> <p>viii. The Department disagrees, a decision to be made on whether the Charter must apply at right level or at company/holding level.</p> <p>ix. The Department notes the submission and will take it into account in the review process.</p> <p>x. The Department disagrees.</p> <p>xi. The Ministerial approval is not required for mineral sampling locally.</p> <p>xii. The Department disagrees.</p> <p>xiii. The Charter makes provision for Employment Active Population (EAP) and not demographics.</p> <p>xiv. The Department notes the submission. This is not a new target.</p> <p>xv. 1 % represents the Companies social license to operate and should be delinked from the ownership element.</p>
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				XVI The Department notes the submission and will revise the Housing and living Standards to ensure that there is alignment. XVII the Department disagrees. XVIII The Department disagrees.
17. Serudumo Sa Rona Community Based Organization (CBO)	General,	<p>I. Serudumo acting on behalf of its members wishes to exercise the right to equally voice the concerns on the draft reviewed Mining Charter. However, given the time period allocated for making submissions, it is not practical for the CBO to adequately brief its members residing in the far flung rural areas and engage meaningfully on these important issues.</p> <p>II. We plead for a sixty (60) days extension for the "meaningful participation" to indeed take place within our communities and constituency.</p>	The Charter was gazetted for a 30 days period as defined in the MPRDA to solicit public comments on same. The Department is open to further meaningful and progressive proposals on the draft Charter.	
18. Zurel Bros SA	Procurement, beneficiation	<p>I. The mining Charter provides for a mechanism for companies to offset up to 11 percentage of the 26% of the ownership reserved for black people. how this 11% can be calculated, what amount of procurement or HR development is needed?</p> <p>II. Why does mineral beneficiation fall under the mining charter in the first place? I know the mining charter is mentioned in the Diamond Amendment Act No 29 of 2005 and the regulations, as well as the Precious Metals Act of 2005 and its regulations, but surely that is a mistake? In section 6 of the precious metals act, it even goes as far as giving the SAMPMR authority to consider the application for a licence or permit if the mining charter is not met.</p>	<p>I. The 11% offset for beneficiation relates exclusively to the ownership element and does not apply to procurement and HRD.</p> <p>II. Mr Menoe to advise.</p>	

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	<p>III. The mining charter is clearly for mines and mining, all the wording ("Mining rights holders") is set around these core operations, however mineral beneficiation is roped into it. We trying to understand why this is, is it maybe because we are working with minerals that are mined? But with that reasoning, the metal industry, motor cars etc should also fall under the mining charter as the metal used to make cars and engines come from mining, also the building industry should fall under the mining charter as the bricks and cement are a result of mining.</p> <p>IV. In our opinion, the diamond and jewellery industry should not be part of the mining charter, sure transformation must be a factor, but why can't the SADPMR not rather request a BBBEE score as a minimum requirement, example level 4 or 5 compliant? With the BBBEE score card, there is room to score points on different categories to assist the companies that score low on other categories? Also, when we are dealing with other companies and government departments, they request anyway our BBBEE certificate and don't recognise the mining charter score card. Just the other day the DTI requested our BBBEE certificate and we told them that we fall under the mining charter and we have a mining charter scorecard, they didn't accept it, we had to swear an affidavit of our BBBEE status.</p> <p>V. The mining charter talks to mining community development, housing and living conditions and it even gives mines points for beneficiating their products locally, how can this be for us (diamond and jewellery shops and factories)? Furthermore our concern is that? It's clearly meant for mines only as how do we get those points on the scorecard, we can't beneficiate our product, it has already been beneficiated from a mine in South Africa? Most diamond and jewellery factories and shops are small businesses, but their turnover exceed the R3.8M as its costly to buy the raw product, and once sold</p>	<p>III The Charter does not apply to beneficiators but to mines who chose to beneficiate. The Department to further consult with the SADPMR regarding PART B of the draft Charter.</p> <p>IV The Department to further consult with the SADPMR regarding PART B of the draft Charter.</p> <p>V The Department to further consult with the SADPMR regarding PART B of the draft Charter.</p>
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19. SAMBCO	Ownership	<p>the profit margins are low but they all add up when it comes to turnover, for example my turnover can be R4M but only approximately 20% of that was actual profit.</p> <p>VI. Our concern is that the SADPMR will enforce as the DMR requires as they are an agency of the DMR. Diamond and Jewellery companies must apply and renew diamond licences and Jewellery permits with the SADPMR and that is where the mining charter requirements are being checked for compliance, if we not compliant, no licence or permit and hence no more business. This is very important to our existence, the industry has already shrunk to record lows because of the availability of economically viable rough diamonds to purchase and cut in South Africa. The remaining companies really cannot survive another blow.</p>	VI The Department to further consult with the SADPMR regarding PART B of the draft Charter.
		<p>I. According to the Definition of the BBBEE Act's first two Objectives:</p> <ul style="list-style-type: none"> > The number of Historical disadvantaged people must be increased in Management, Ownership, Control of Enterprises or Co-Operatives and Productive assets. > B. Facilitating Ownerships and Management of enterprises and Productive Assets by Communities, Workers, Co-Operatives and other collective enterprises. <p>At SAMBCO we believe that the Two Primary objectives of the BBBEE Act can be easily achieved in the Mining Charter through Mining and Beneficiation Co-Operatives. Co-Operatives have proven to be Inclusive in Nature and can benefit a larger portion of the Nation/population taking into account the poorest of the poor.</p> <p>At SAMBCO we believe that "Meaningful Economic Participation" can only be achieved through BEE Transactions with Co-Operatives in the form of Community Co-Operative, ESOP's Co-Operatives and Workers Co-Operative, such Co-Operatives will be able to divers into Services Co-Operatives, Consumables Co-Operatives and Capital Goods Co-Operatives, Housing Co-Operatives and Health Co-Operatives.</p>	<p>I. The Department will consider alternative models to give effect to broad based and meaningful transformation of the mining industry.</p>

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	<p>According to the Mining Charter's first two Objectives:</p> <ul style="list-style-type: none"> ➤ Promote equitable access to the Nation's Minerals resources to all the people of South Africa. ➤ Substantially and meaningfully expand opportunities for black people to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources. <p>At SAMBCO we have seen Mining Co-Operatives benefiting their communities in BRICS member countries like Brazil, China and India. Black people opportunities are more increased in the form of Co-Operatives through Tax Incentive, Grants and Soft Loans. SAMBCO is also partnered to a number of International and Local Educators In Mining and Beneficiation, to insure on the success of our Co-Operatives</p> <p>At SAMBCO we see ourselves as partners in the BBBEE Act as the poorest of the poor and the BBBEE Act recognizes Co-Operatives as an alternative for the poorest of the poor.</p>	
<p>II.</p>	<p>We Request the Mining Charter to give a minimum of 10% ownership per Mining Right unto Co-Operatives to enable the growth of Co-Operatives or Artisanal Small-Scale Miners and a Minimum of 26% were there is no BEE partner or the Miner is struggling to find suitable BEE partners.</p>	<p>Refer to point I above.</p>
<p>III.</p>	<p>It is requested the DMR to empower Co-Operatives with the 6 152 Abandoned Mines, We also request that the mining Dumps be given to Co-Operatives, The dumps are terrorizing communities with illegal miners or Zama-Zamas and Co-Operatives in the form of Communities, un-employed women and youths will eradicate the Zama-Zamas from the face of our economic landscape.</p>	<p>The suggestion is noted.</p>

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

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	<ul style="list-style-type: none"> ➤ Capital Goods: A mining right holder must procure a minimum of 60% of locally manufactured capital goods from BEE compliant manufacturing companies. These supply contracts must have a minimum of 30% youth ownership and management participation. ➤ Consumables: A mining right holder must procure a minimum of 70% of locally manufactured consumables from BEE compliant manufacturing companies. These supply contracts must have a minimum of 30% youth ownership and management participation. ➤ Services: A mining right holder must procure a minimum of 80% of services from BEE compliant manufacturing companies. These supply contracts must have a minimum of 30% youth ownership and management participation. 	
Beneficiation	Beneficiation should be used to create additional opportunities for the youth in downstream linkages, the department of mineral resources should adopt a policy that progressive increases local beneficiation of south african mined commodities.	The submission is noted.
Employment equity	<p>We submit that:</p> <ul style="list-style-type: none"> ➤ Executive Management (Board): A minimum of 5% must be youth. ➤ Senior Management (EXCO): A minimum of 5% must be youth. ➤ Middle Management level: A minimum of 10% must be youth. ➤ Junior Management level: A minimum of 20% must be youth. ➤ Core and Critical Skills: Mining right holders must ensure that a minimum of 10% youth is represented in the mining company's core and critical skills by diversifying their existing pools. 	The submission is noted.
Human Resources Development	We submit that 40% of all Human Resources Development target expenditure shall be dedicated to youth beneficiaries.	The submission is noted.

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

	part of DTI and that there is no accredited B-BBEE verification agencies to issue certificates creates a big problem for entities who fall under this sector code.	
Ownership Scorecard	It is suggested that the trust as part of Ownership structure must comply with the requirements as set out in the Codes of Good Practice. To ensure that the trust is managed correctly and to ensure that the trust is not circumventing any of the requirements of the B-BBEE Act.	All the trust proposals will be revisited in line with the detailed Trust Report commissioned by the Dti.
Procurement, Supplier and Enterprise Development	There is no mention of Empowering Supplier status in this scorecard. If a B-BBEE certificate is issued in terms of the Mining sector the entity will not be able to use this certificate in the sense that their clients will not be able to use it for procurement purposes. The first problem is that this is not an accredited B-BBEE certificate and secondly the Mining Entity will not be measured as an empowering supplier.	The Department interacts with mining operations not suppliers. Suppliers account to Dti. Further consultation with Dti will be done to clarify this matter.
Employment Equity	Clarification needs to be provided whether the EAP targets are going to be applicable to this element and also the calculation method needs to be provided.	The Department of labour to assist.
Housing and Living Conditions	It is suggested that there should be an alternative scorecard for Mining Entities who does not have any accommodation for workers. Like for instance in smaller mining entities whose employers have their own living arrangements and accommodation and who lives in town?	This element is a priority element and operations must endeavour to comply with all its requirements including provision of subsidies, guarantees etc.
Part B – Application of the mining charter	It is suggested that the brackets for determining whether an entity is an EME or a QSE must be amended to be in-line with the Codes of Good Practice. Below is the list of how the codes of good practice measures its entities : <ul style="list-style-type: none"> ➤ EME – Turnover below R10 million; ➤ QSE – Turnover between R10 – R50 million; ➤ Large – Turnover more than R50 million; 	The Department to further consult with the SADPMR.

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

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

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	<p>targets be changed, or the transitional period be extended until the education system is capable of catching up and fulfilling the demand.</p> <p>The target percentages of women to be employed in mining companies. Whereas the Charter previously required 10% women in mining (including in core critical mining activities), the philosophy now appears to be that black women should roughly comprise half of the total black staff complement at all levels. In our experience, there simply are not enough black female candidates to fill positions, and the shortage is more acute in respect of core critical mining. This aspect should be considered and negotiated with the industry and labour. We would suggest that the employment equity targets postulated in the Reviewed Mining Charter cannot be met within a three year transitional period and are not aligned with those of the B-BBEE Act, the Codes, and/or the National Development Plan, 2030. While it is a laudable goal that employment should broadly reflect the demographics of the country, this should, to some extent, be allowed to happen over time, and not be forced upon an industry regardless of the cost of such compliance, otherwise the net result may be fewer jobs for all in the South African mining industry.</p>	
Ministerial consent provisions	<p>In a number of instances, the draft Reviewed Mining Charter contains provisions which require ministerial consent or ministerial determinations for certain actions. These include:</p> <ul style="list-style-type: none"> ➤ ministerial consent for consolidation of empowerment transactions (clause 2.1(i)); ➤ ministerial consent for conducting sample analyses using foreign-based facilities (clause 2.2 point (c) under the heading "Services"); ➤ Possible ministerial exemption from the requirement to invest 15% of the 5% payroll levy in the Ministerial Skills Development Fund " ...in the event of having partnered and supported State owned entity (e.g. Mintek) in respect of research and development". 	<p>The Department will consider development of a consent guideline to outline the process, timeframe and requirements for Ministerial consent.</p>

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

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	<p>should look at increasing the effectiveness of the SETAs instead of imposing what is essentially a new "tax" on mining companies. Moreover, the Reviewed Mining Charter is not clear about the nature and structure of the trust, how the trustees will be elected and/or appointed, how the beneficiaries will be selected, and the manner in which the trustees are to exercise their fiduciary duties. In its current form, this provision is too vague to be enforceable and there is a risk that dishonest trustees may abuse the funds in the trust.</p> <p>Definition of "Social Development Trust" read with clause 2.2:</p> <ul style="list-style-type: none"> ➤ To the extent that this fund has not yet been established, we do not support its establishment, for substantially the same reasons as set out in relation to the "Ministerial Skills Development Trust Fund". <p>Empowerment Trusts (clause 2.1(d)):</p> <ul style="list-style-type: none"> ➤ It is unclear what is meant by the requirement that these trusts must "report" to the South African Revenue Services and the Department of Mineral Resources. What level of detail and/or content would this reporting entail? <p>The effect of traditional authority representation as referred to in clause 2.1(e):</p> <ul style="list-style-type: none"> ➤ The requirement for traditional authority representation on a community trust has the potential to be highly problematic in certain situations. Over the years, the mining industry has noticed that the involvement of traditional leadership in empowerment transactions can lead to a proliferation of internal political strife within communities. We submit that traditional representation should not be 	<p>The Department disagrees with the submission.</p> <p>The Department will reconsider proposals on trusts in line with the Trust Report commissioned by the Dti.</p> <p>These differences will be provided for in the MOI's which includes dispute resolution mechanisms.</p>
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	<p>a strict requirement for effective and substantial ownership change – instead, mining companies should be allowed the latitude to reach agreement with communities on terms that are acceptable to both the mining company and to the majority of members of that community.</p> <p>The meaning of the term “enterprise development” (clause 2.2):</p> <ul style="list-style-type: none"> ➤ The term “enterprise development” is used a few times in this clause, and it apparently has a very specific meaning, which differs from “small business development”. We respectfully submit that the Reviewed Mining Charter will benefit from a clear definition for this term. <p>Verification of local content for capital and consumer goods (clause 2.2):</p> <ul style="list-style-type: none"> ➤ The draft Reviewed Mining Charter stipulates that “Mining right holders shall before submitting the annual mining charter report to the Department verify local content for capital and consumer goods as provided for above with the South African Bureau of Standards (SABS).” This provision seems highly impractical and/or speculative, at least for the foreseeable future, as we are not aware of any process for verifying local content of goods with the SABS. <p>Multinational supplier contributions to Social Development Trust Fund (clause 2.2):</p> <ul style="list-style-type: none"> ➤ This provision appears rather odd, in that it places an obligation on suppliers to the mining industry, as opposed to mining companies themselves. To the extent that mining companies themselves might be expected to “enforce” compliance with this provision, it places an unfair obligation on mining companies, who are not in control of such multinational companies’ expenditure. Moreover, the provision in its current form is vague: it is not clear which entities would qualify as “multinational 	<p>The Department will reconsider the use of this term and definition thereof.</p> <p>The Department to consult with SABS/DtI on this submission.</p> <p>The Department will consider defining Multinationals, the Department interfaces with right holders and they have a duty to account for their suppliers.</p>
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Empowerdex (Pty) Ltd.	overarching provisions that have not been addressed in this Charter:	<p>suppliers", what the level of supply should be before this provision becomes applicable, and how exactly the "1% of annual turnover" would be calculated.</p> <p>Beneficiation:</p> <ul style="list-style-type: none"> ➤ There should be clear provisions stipulating how beneficiation credits can be achieved and how many credits will be awarded for varying levels of beneficiation. <p>Non-Compliance (Clause 2.12):</p> <ul style="list-style-type: none"> ➤ From a legal perspective, the Reviewed Mining Charter is not legally enforceable in the same way as legislation, and hence non-compliance does not automatically equate to contravention of the MPRDA. This provision should be deleted and compliance with the provisions of the MPRDA should be measured against the provisions of the MPRDA itself. <p>Review of the Charter (Clause 2.13):</p> <ul style="list-style-type: none"> ➤ The Minister is not empowered by the MPRDA to review the Mining Charter. Furthermore, any review should be based on concurrence by all relevant stakeholders. <p>I. The clarification notice 408 of 2015 (gazette 38766) issued by the Ministry of Trade and Industry on 6th May 2015 which detailed specific procedures to develop and gazette transformation charters. In this regard, it is a requirement for the relevant industry body and its Line Ministry (the DMR in this instance) to apply to the Dti in writing for such charter. In addition to that, they must provide evidence of compliance with S12 iv of the B-BBEE Act. The Constitution and MPRDA alone do not satisfactorily address the objectives set forth in</p>	<p>Mr Menoe to advise.</p> <p>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>Refer to the reply above.</p>
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		<p>this document to address the process of redressing the past inequalities in the economic participation of South African citizens.</p> <p>> 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> <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 3 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>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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	<div data-bbox="331 1865 1228 2078"> <p>Definitions</p> </div> <div data-bbox="331 813 1228 1865"> <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. </div>
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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>	
	Objectives	<p>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?</p>	
	Ownership	<p>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:</p>	

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	<p>A Sale of Assets provisions,</p> <ul style="list-style-type: none"> ➤ 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 <p>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</p> <p>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.</p> <p>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.</p>	
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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> <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>
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		<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 lives of members of communities where the mines are located?</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>	
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>1. 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? 	

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		<p>➤ How will the Charter treat the expenditure on non-employee individuals? The Codes allow for the 5% 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>		

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	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-compliance? 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?	
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>	

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	<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 needs⁵⁶. 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>	

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		<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 meaningful 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>	

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	<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>	
<p>African rainbow mining ASSMANG)</p>	<p>I. BEE compliant Company</p> <p>The exact level of 88BEE 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 88BEE levels. The dti levels also indicate</p>	<p>Definitions</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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		<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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PROCUREMENT, SUPPLIER & ENTERPRISE DEVELOPMENT	Organised business & labour will not be equipped to participate at ground level for community projects. 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.	
I. Capital goods	<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>	
II. Consumables and Services	<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>	
III. Multinational suppliers of goods		

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		<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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	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>		
Diamini Attorneys	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>	

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	<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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	company that has proven and shown a guaranteed economic interest, from short to medium term returns and direct control in the mining entity.		
	<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>	(v)	Noted and department consider the aspect of payment of dividends carefully.
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>	i. ii.	<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 via 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>	i.	Input noted and the Department will highlight the same during its engagement with the DTI on the

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Geological Society of South Africa	Mine Communication Development	<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.</p> <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>alignment of the transformation tools.</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>	two
	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>	

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	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>

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		<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. 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>
Mining Equipment Manufacturers of Southern Africa	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). 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 2% requirement from Multinational suppliers to</p>

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	<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 DH 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 Dtd.</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>

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2. Mineral Law in Africa (MLIA)	Preamble	<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.
	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>	<p>i. Submission noted, the Department will reconsider the</p>

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		<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>1. 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.

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	<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 "mining" 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>	
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>

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	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.
South African Diamond Manufacturer Association (ADMA)	<p>Part 8: Application of the Mining Charter for Permits/Licences Granted under the Precious Metals Act, 2005, and the Diamonds Act, 1986, as amended</p> <p>Policy considerations</p>	<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> <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>	<p>The concerns are noted and the Department will consult with the SADPMR.</p>

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		<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 Menore to advise.	
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>	The foreign based manufacturing companies are to setup shop locally within the three years transitional period falling which the affected mining operation will be required to motivate to the Minister for procuring from foreign based manufacturing companies.	
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>	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	

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		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 non-compliance 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.
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	1. 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	1. Meaningful consultation will be defined in the regulations. It is the responsibility of the municipalities

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<p>SOCIO-ECONOMIC IMPACT</p>	<p>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.</p> <p>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.</p> <p>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</p>	<p>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.</p> <p>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.</p>
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		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.
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>
INGLO GOLD USHANTI	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

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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 BBEEE 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

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		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.
ARD Mining ment (pty)	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 numbered (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?]	

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		<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	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	

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		<p>"Enterprise Supplier Development" which refers to the purchase of goods from BEE compliant companies.</p> <p>➤ 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> <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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	<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 Enterprise Development 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>	

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		<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>		

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	<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>VII. The Department t will relook into the definitions.</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>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>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 models 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 entire 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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		<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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Government Departments 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 Delegation.	13 th July 2016 (Wednesday).	9h00-12h30.	DMR Exco Boardroom.	Done.
	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).	9h00-15h00.	Midrand.	Done.
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.
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. Ntsimbintle Mining (Pty) Ltd/Tshipi e Ntle Manganese 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.	Decided.
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.
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.
1. Bowman Gilfillan.	20 th July 2016 (Wednesday).	09h00-10h00	DMR Exco Boardroom.	Done.

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Legal Fraternity,
accountancy and
consultancy.

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.



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.

Associations, Societies,
Institutes and Councils.

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.

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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.
5. South Africa-China Economy and Trade Associations (SACETA).	21 st July 2016 (Thursday).	14h00-15h00.	DMR Exco Boardroom.	Done.
1. South African Institute of International Affairs (SAILA).	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)				
3. Amplats	22 nd July 2016 (Friday).	11h00-12h00	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.				
1. AMCU	25 th July 2016 (Monday).	10h00-12h00	DMR Exco Boardroom	Done.
1. South African Capital	26 th July 2016 (Tuesday).	09h00-10h00.	DMR Exco Boardroom.	Done.

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Equipment Export Council (SACEEC).	26 th July 2016 (Tuesday).	10h00-11h00.	DMR Exco Boardroom.	Done.
2. South African Mining and Beneficiation Co-operatives (SAMBCO).				
3. Deloitte	26 th July 2016 (Tuesday).	11h00-12h00	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.
1. SADMA	27 th July 2016 (Wednesday)	09h00-15h00	DMR Exco Boardroom.	Done.

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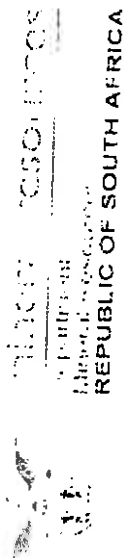
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DAY/DATE		DAY/DATE	DAY/DATE	DAY/DATE
1. Standard Bank	28 July 2016 (Thursday)	11h00-13h00	DMR Exco Boardroom	Outstanding.
2. Nedbank	28 July 2016 (Thursday)	14h00-15h00	DMR Exco Boardroom	Outstanding.
1. Creative Voodoo Consulting	29 th July 2016 (Friday)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

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ATTENDANCE REGISTER

MEETING BETWEEN DMR, ZUREL BROTHERS, CER, CMMS, UNICEF, MACAU, SERODUMO AND
BULELANI MKHONTO.

DATE: 19 JULY 2016

TIME: 09H00-17H00

DRAFT REVIEWED MINING CHARTER

NAME	ORGANISATION	SIGNATURE	CONTACT NUMBER	EMAIL ADDRESS
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MACUA

*Nothing about us
without us.*



Nothing about us without us



WAMUA

Women Affected by Mining United in Action

THE PEOPLES MINING CHARTER

We the mining communities here gathered reiterate our fundamental inalienable human rights and as such are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all our fundamental human freedoms and rights can be fully realized.

We affirm that Democracy is premised on the following:

That affected people must determine their own destinies. For us this means choosing for our-selves both our own developmental paths, and to participate in all decision making and manage or co-manage the utilisation of our resources if we so choose.

In all our struggles against colonialism and Apartheid we have struggled for these, and have insisted that no authority is greater than the will of the people. We have consistently told all the past rulers, that there can be nothing about us, without us.

MPRDA/Mining Legislation

Noting that the current mining laws as legislated in the MPRDA limits our democratic and inalienable right to self-determination, that amendments currently proposed to the Bill seeks to further reduce our right to self-determination and that in addition, many customary communities own their ancestral land although their ownership has not been formally recognized with title deeds of their mining and mineral rights, we reaffirm that it is the peoples, specifically occupiers of the land's, fundamental right to decide if any extractives / mining can take place on their land or not.

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We reiterate that it must be the directly impacted and affected local community, who must have the greatest weight in determining whether extractives happen on their land and not only outside interests. The values and principles of our shared humanity, our aspirations of collective prosperity and our legitimate concerns about future losses such as the erosion of our connection to ancestral lands, our heritage and livelihoods - govern our decision making.

We believe in self-reliance of communities and accordingly call on our democratic government to respect and support, with revenue from our taxes, the decisions made by communities for a non-fossil fuel and non-extractive driven path of development.

Our historical and recent experiences have taught us that whenever corporations and their allies seek to mine on our lands they will adopt "divide and rule" strategies which only serves to benefit them.

To resist these initiatives we commit to mobilise and build movements, coalitions and networks that will pool our resources and protect our integrity as people of the soil. These peoples formation will be governed by clear principles that leaders are accountable to a community and cannot take decisions outside a legitimate, representative community decision making bodies of all the affected people. When powerful groups seek to co-opt our leaders, who act on their own, we will disown them, and inform the world of their treachery. It follows that those decisions will not be binding on the community.

We note that the mining industry is cloaked in secrecy which runs contrary to our constitutional values and insist that both government and corporations have a duty to provide affected communities with transparent information and processes. We affirm that we will be guided by:

- Informed knowledge. The government as our elected representatives must ensure that an independent capacity development fund is accessible to such communities to source diverse sources of knowledge, geoscience, legal, psycho-social etc. which will help communities to make informed decisions
- Government departments responsible for various aspects of environmental protection must come to the communities immediately when an application for mining rights and water use licenses and the like are made to obtain directly our informed consent.
- Similarly, the same must apply to any authority responsible for extractives in particular mining and land
- We believe we are the owners of the land and not governments, and real reparations and compensation, which should be both individual and collective, must start with those living around the mines and who work in the mines who were relocated by mining activities, - as we feel the collective negative impacts of mining more directly than others.
- We Believe that the MPRDA must include provisions that direct no less than 50% of Royalties and tax allocations from mining activities, for development of directly affected communities, to counteract the disproportionate losses suffered by mining communities and labour sending areas

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These disproportionate losses must be recognized in terms of gender, environmental, health, spiritual and land use losses, which are in violation of basic international and national human rights law.

We, as united communities, call on all other mining communities not to entertain any corporation that has a track record of violating labour, human and environmental rights anywhere in the world.

In addition, we will refuse to give consent to any company that does not have a transparent community driven process of negotiation which has at its core the principles of Free Prior and Informed Consent.

We call for the inclusion in the MPRDA of an independent, accessible, speedy and effective grievance or redress policy and mechanism to address community concerns throughout the mining /extractive processes.

We insist that the exclusion of mining affected communities in having a direct say in the governance of their lives is unconstitutional and we commit to ending this colonial project of dispossession in our lifetime.

The Mining Communities gathered here commit to undertake a democratic process of collecting demands from mining affected communities across South Africa to bring all their demands together in a Peoples Mining Charter that should be included in the MPRDA.

The key declaration is based on the following

Principles:

1. Community Voice in Decision Making through negotiation based on right of consent to determine what activities occur on one's land.
2. Democratic Community representation and customary decision making processes that are community based and not based on undemocratic traditional Authority.
3. Benefits from mining activities (profits, employment, procurement, and local economic development) should be shared equitably distributed to directly affected communities, near mining communities, workers and the public through a democratic process.
4. The public, specifically mining affected communities must have the right to Free and accessible access to information regarding all operations that affect the economic, social and environmental well-being of communities.
5. Communities bear a disproportionate burden of the costs of mining and there should be independent, accessible, speedy, and effective recourse mechanisms, before during and after mining.
6. Rehabilitation standards should ensure that the land is no worse than when mining started.

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7. Restitution and Reparations should correct historical wrongs and should include environmental, social, cultural and heritage rights including spiritual connections to land, people and nature.
8. Compensation for loss of livelihoods and economic social, environmental, cultural and heritage resources should be based on full cost accounting including future losses of alternative development paths and value loss of minerals.
9. Women must have the right to inherit Land and should be consulted on all issues affecting their bodies, families, land and lives in both customary traditional structures and community, local, provincial and national structures.

Adopted on 26 June 2016 in Berea

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CALS

Centre for Applied
Legal Studies

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CALS welcomes release of Mining Charter

19 June 2017 - Lee-Anne Bruce

New Mining Charter incorporates transformative changes from CALS reports

The Centre for Applied Legal Studies (CALS) welcomes the release of the Reviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry (Mining Charter). The latest draft of the Charter was released on Thursday 15 June 2017 by the Department of Mineral Resources.

CALS is encouraged by the transformative amendments made to the Charter. We are particularly pleased to see several of the recommendations from our Social and Labour Plan Reports (see more here) reflected in the new Charter. These include:

1. Social and labour plans must now be made public automatically;
2. Social and labour plans must be published in English and other languages of affected communities;
3. Mining companies operating in the same area are encouraged to collaborate for greater impact;
4. Social and labour plans must be aligned to the municipalities' development plans to ensure integrated development;
5. The contributions of mines to development must be proportional to the size of the investment;
6. There must be alignment of the social and labour plan system with the Mining Charter;
7. Mine workers and communities must have decent living conditions; and
8. There must be funding set aside for local economic development.

"This is a huge step for everyone working to transform the mining sector in South Africa," says Louis Snyman, attorney in the Environmental Justice Programme at CALS. "This is an encouraging sign and we hope that community members stand to benefit from these amendments. Going forward, compliance monitoring and enforcement must be the highest priority."

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We do also note with concern a few elements of the Charter, including the lack of consultation in its development with affected community members; the lack of detail on the Mining Transformation and Development Agency, and its removal of the direct obligation to contribute a minimum of 1% of annual turnover to local economic development. Additionally, while we applaud the progress made with regards to access to information, we hope this extends to annual compliance reports as well.

For inquiries, please contact:

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University of the Witwatersrand, Johannesburg.

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MEETING BETWEEN DMR, BOWMAN GILFILLAN, CALS, PETA ATTORNEYS, PROF HANRI MOSTERT,
KPMG AND WEBBER WENTZEL
DATE: 20 JULY 2016
TIME: 09H00-16H30

DRAFT REVIEWED MINING CHARTER CONSULTATIONS

NO.	INITIALS AND SURNAME	ORGANISATION	CONTACT NUMBER	EMAIL ADDRESS	SIGNATURE
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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.

	<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.
	<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 	<ul style="list-style-type: none"> • Noted.

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		<p>of the BBBEE 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 BBBEE/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. 	
			<ul style="list-style-type: none"> • Noted clarity will be provided to talk to enterprise development. • Supported. 	

	<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>	

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		<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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equity instruments will be included in the income of the employees. Restricted equity instruments are defined to include ESOPS.

- This proposed section could be problematic if the ESOP's term is lengthy or if the scheme is structured to be restricted indefinitely to ensure prolonged fulfilment of the objectives of the Mining Charter and BBBEE legislation. This proposal potentially has negative implications for employees as it seeks to cast the net wider with regard to amounts being included in the income of employees, as opposed to

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			enhancing the taxation laws to bring them in line with, and to promote, the country's BBBEE objectives.
	<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. 	<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 	



			development are responsible for 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 partner;

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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. • Human Resources / Skills – also cover areas directly or indirectly related e.g. occupational health and safety, laboratories for hygiene testing samples etc. • Health and safety needs to be brought back in given the problems with Mine Health & Safety Act – 	
	<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. • 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: 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).</p> <ul style="list-style-type: none"> • We are propose the following additions in the Objectives section: 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 	<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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and ensure that they actively and meaningfully participate in the development of mining project/s.

- The Department notes the concern. The process to finalise the MPRDA Bill is managed by Parliament.

- The Department notes the concern and will reconsider the proposals. The Charter 5% proposal excludes the mandatory 1% skills levy as per the Skills Levy legislation

- 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

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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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		goods used by contractors and leased fleet.	<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 	M. J. Z MK

	<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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	benefits to be derived from the provisions of the Mining Charter.	
18/11/2016. Community consultation in Free State Province, Matjhabeng Local Municipality	<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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<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. 	<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? 	<p>Community consultation in Limpopo Province, Mogalakwena Local Municipality.</p>	13/12/2016.

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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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M. J. Z. MK

		<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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W. J. D. MK

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.

WJSZ MK

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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WJSZ MK

		<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. 	

M. S. 2
MR

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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W. J. Z. Mh

		<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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M. J. Z MK

		<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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M.S. 2 MK

implementation and enforcement of the law.

- The Department is lacking in this regard.
- There must be measures to ensure that dividends are declared to BEE partners.
- What are the benefits of pursuing mineral beneficiation, the Charter is not clear.
- The Department needs to work on stakeholder relations.
- It must provide support to communities to derive benefit from the proposals.
- Procurement must be a ringfenced element.
- The proposed stakes for women empowerment must be increased.

W. S. D. MK.

		<ul style="list-style-type: none"> • The definition of HDSD to Black is supported. • Developmental funding institutions must come on board. • The Charter is silent on creation of Black enterprises. 		
02/03/2017.	National Union of Mine Workers, Tshwane.	<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. 	

M. J. Z. MK

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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. | |
|--|--|--|

W.S. 2. MK

		<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 indicated 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

W.S. Zmk

	<p>already undertaken. If DMR can do as indicated there will be no need for seeking deviation on the stakeholder engagement.</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 	<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"> • DMR indicated that its position is to conduct in-house verification as opposed to independent verification agency
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W.S.2 M.R.

also underlook to engage with the BEE Valuation Regulator (SANAS) in this regard. Another option was that the verification should be conducted by an independent agency while DMR can do internal due diligence and this option could be confirmed with SANAS and feedback will be provided during the next meeting.

- DTI is fully supportive of the proposal for the increment of BEE ownership shareholding of 29% since it is not below the minimum of 25%;

- DTI supports 11% offset for beneficiation against the ownership element. However, it required clarity on the implementation of the same.

- DMR indicated that such clarity will be provided on the proposed amended Section 26 and regulation of the MPRDA thereof.

M. J. Z. M.R.

		<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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215.2 MK

	<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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M. S. Z M.K

		<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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M. J. Z. MK

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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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0000455

RAIO

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

Case No. 71147/17

Application for intervention **as** parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

BONGIWE MABUSELA

Ar 1 **BH MK**

state under oath that:

1. I am the Director: Empowerment Transactions Assessment in the Department of Mineral Resources (**"the Department"**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:
 - 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
 - 4.2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand.



BONGIWE MABUSELA

mk

MA 5 →

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on 10th November 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.


Commissioner of oaths

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

BH

0000458

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

RA101

Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SIBUSISO KOBESÉ

mk

11-1-15

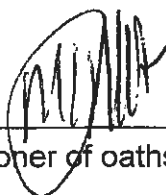
state under oath that:

1. I am the Deputy Director Mineral Policy Development in the Department of Mineral Resources (**"the Department"**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:
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 - 4.2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand.


SIBUSISO KOBESE

M. J. 2 mk

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on 16th November 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



Commissioner of oaths

Full names:
Business address:
Designation:
Capacity:

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



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

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RA10.2

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Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

SIBONGILE JANE MALIE

MJ-2 mk
SS

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state under oath that:

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

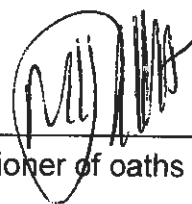
SIBONGILE JANE MALIE

mk

M. J. Z

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The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on 10th November 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



Commissioner of oaths

Full names:
Business address:
Designation:
Capacity:

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

M. J. Z. S.S.

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

464
~~0000465~~
RA10.3

Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

RENDANI MUTHIGE

mk

M J. 2
2

state under oath that:

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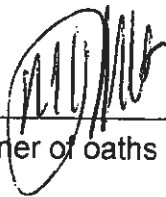


RENDANI MUTHIGE

mk

M. J. 2

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Commissioner of oaths

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

D. M. E. Z

467
~~0000408~~

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

RA104

Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

JEANIFFER NTOME

MC

MEI 7

state under oath that:

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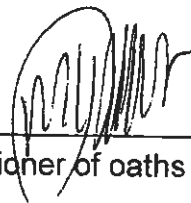
J. Ntome

JEANIFFER NTOME

mk

MJ-2

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on 10th November 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



Commissioner of oaths

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

W.E.T

GAUTENG DIVISION, PRETORIA

~~0000471~~
RAIOS
Case No. 71147/17 **470**

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned.

NHLANHLA JALI

state under oath that:

1. I am the Deputy Director in the Office of the Deputy Director General in the Department of Mineral Resources ("**the Department**").
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
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NHLANHLA JALI

~~0000473~~
472

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

Commissioner of oaths

Full names:

Business address:

Designation:

Capacity:

GAUTENG DIVISION, PRETORIA

~~0000474~~
CA10.6
Case No. 71147/17
473

Application for intervention **as** parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned.

MODILATI MALAPANE

state under oath that:

1. I am the Acting Chief Director in the Department of Mineral Resources (**"the Department"**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
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MODILATI MALAPANE

		<p>already undertaken. If DMR can do as indicated there will be no need for seeking deviation on the stakeholder engagement.</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 	<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"> • DMR indicated that its position is to conduct in-house verification as opposed to independent verification agency
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M. J. Z M.K

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M.J. 2 MR

	<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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21.5.2 MK

		<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.
--	--	---	---

M. J. Z mk

		<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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M. J. Z MK

		<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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W15.2

mk

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

RAIO

Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

BONGIWE MABUSELA

BW MK
M. S. >

state under oath that:

1. I am the Director: Empowerment Transactions Assessment in the Department of Mineral Resources ("**the Department**").
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:
 - 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
 - 4.2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand.

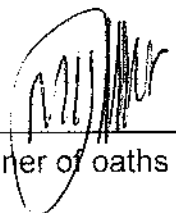


BONGIWE MABUSELA

Mk

MA-F >

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on 16th November 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



Commissioner of oaths

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

BH
WA. T. ->

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

RA101

Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

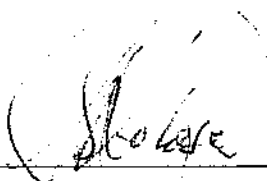
SIBUSISO KOBESÉ

MK

M.E.S.

state under oath that:

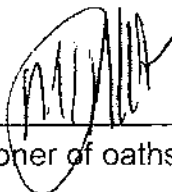
1. I am the Deputy Director Mineral Policy Development in the Department of Mineral Resources ("the Department").
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:
 - 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
 - 4.2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand



SIBUSISO KOBESE

M. J. Zwane mk

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on 16th November 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



Commissioner of oaths

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

W1.5.2

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

RA10.2

Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

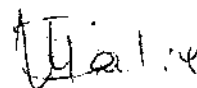
I, the undersigned,

SIBONGILE JANE MALIE

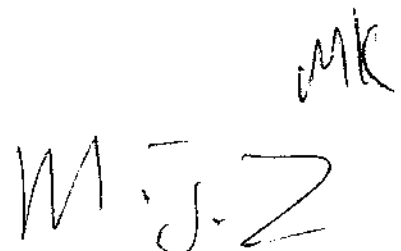
M.S. Z. SS. mk

state under oath that:

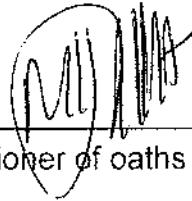
1. I am the Director Mineral Policy Development in the Department of Mineral Resources ("**the Department**").
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:
 - 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
 - 4.2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand.



SIBONGILE JANE MALIE



The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on 10th November 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



Commissioner of oaths

Full names:
Business address:
Designation:
Capacity:

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

M-J Z.S.S

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

RA10.3

Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

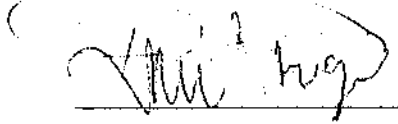
RENDANI MUTHIGE

mk

M J. Z

state under oath that:

1. I am the Deputy Director Mineral Policy Development in the Department of Mineral Resources (**"the Department"**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:
 - 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter: and
 - 4.2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand.

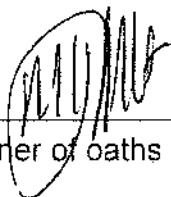


RENDANI MUTHIGE

mk

M. J. 2

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on 10th November 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



Commissioner of oaths

Full names:

Business address:

Designation:

Capacity:

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

R M.E.Z

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

RA104

Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

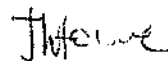
JEANIFFER NTOME

MK

M E Z
TN

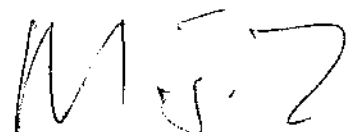
state under oath that:

1. I am the Assistant Director Mineral Policy Development in the Department of Mineral Resources (**"the Department"**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:
 - 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
 - 4.2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand.

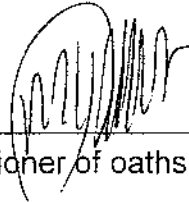


JEANIFFER NTOME





The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Pretoria on 10th November 2017, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



Commissioner of oaths

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

M52

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I the undersigned.

NHLANHLA JALI

state under oath that:

1. I am the Deputy Director in the Office of the Deputy Director General in the Department of Mineral Resources ("**the Department**").
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with
 - 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
 - 4.2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand

NHLANHLA JALI

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

Commissioner of oaths

Full names:

Business address

Designation:

Capacity

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I the undersigned:

MODILATI MALAPANE

state under oath that:

1. I am the Acting Chief Director in the Department of Mineral Resources ("**the Department**").
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:
 - 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter; and
 - 4.2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand

.....
MODILATI MALAPANE

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned.

MOTLATSO KOBE

state under oath that:

1. I am the Chief Director in the Department of Mineral Resources (**"the Department"**).
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with
 - 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter and
 - 4.2 the consultation between the Respondent and the Department on the one hand and the Applicant and the other stakeholders on the other hand

MOTLATSO KOBE

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

Commissioner of oaths

Full names.

Business address.

Designation

Capacity

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

RA10.8

Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MOSA MABUZA

state under oath that:

- 1 I am the Chief Executive Officer of the Council for Geoscience. I was the Deputy Director General in the Department of Mineral Resources (**"the Department"**).
- 2 The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct
- 3 I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me
- 4 In particular I confirm the contents of the Answering Affidavit in so far as it deals with
 - 4.1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter, and

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

MOSA MABUZA

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

Commissioner of oaths

Full names
Business address
Designation
Capacity

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

RA10.9

Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

MTOHOKOZISI LETHUKUTHULA MTSHALI

state under oath that:

- 1 I am the Deputy Director, Mineral Policy Development in the Department of Mineral Resources ("**the Department**")
- 2 The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct
- 3 I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Department and me.
- 4 In particular, I confirm the contents of the Answering Affidavit in so far as it deals with:
 - 4 1 the history, nature, purpose, scope and development of the charters from inception until the 2017 charter, and
 - 4 2 the consultation between the Respondent and the Department on the one hand, and the Applicant and the other stakeholders on the other hand

MTOHOKOZISI LETHUKUTHULA MTSHALI

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

Commissioner of oaths

Full names:

Business address

Designation:

Capacity:

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

RAIO.17

Case No. 71147/17

Application for intervention as parties:

**MINING AFFECTED COMMUNITIES UNITED
IN ACTION**

First Applicant

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

Second Applicant

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

Third Applicant

In the matter between:

THE CHAMBER OF MINES SOUTH AFRICA

Applicant

and

MINISTER OF MINERAL RESOURCES

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

GOITSEONA DESMOND PILANE

state under oath that:

1. I am an adult male, practicing attorney carrying on a practice of an attorney at 72 6th Aveue, Florida, Roodepoort, under the name and style Goitseona Pilane Attorneys Inc.
2. The facts contained in this affidavit are within my personal knowledge and are, to the best of my knowledge and belief, both true and correct.
3. I have read the Answering Affidavit of Mosebenzi Joseph Zwane the Respondent in this intervention application, and confirm its correctness insofar as it relates to the Deaprtment and me.
4. In particular, I confirm the contents of the Answering Affidavit in so far as it deals with the meeting held with the Deputy Judge President on 20 October 2017.

GOITSEONA DESMOND PILANE

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

Commissioner of oaths

Full names:

Business address:

Designation:

Capacity:

Department:
Mineral Resources

REPUBLIC OF SOUTH AFRICA



MATJHABENG LOCAL MUNICIPALITY

ATTENDANCE REGISTER

MINING CHARTER COMMUNITY CONSULTATION

18 November 2016

Event Venue:
Event Time:

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

NO	NAME & SURNAME	ORGANISATION	TEL	EMAIL	SIGNATURE
1					
2					
3	J. SANCHEZ	San Jose, Uruguay	078/153784	jsanchez@data mail.co.uy	
4	Mosiko Mwanje	Arusha, Tanzania	0769707325	mosiko@arusha.go.tz	
5					

ATTENDANCE REGISTER: MINING CHARTER COMMUNITY CONSULTATION

152

RA II
~~RA II~~



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA



MATJHABENG LOCAL MUNICIPALITY

ATTENDANCE REGISTER MINING CHARTER COMMUNITY CONSULTATION

18 November 2016

Event Venue:
Event Time:

Toronto Community Hall Welkom CBD
10:00 – 12:30

NO	NAME & SURNAME	ORGANISATION	TEL	EMAIL	SIGNATURE
1					
2					
3					
4	M. L. KANE BE	MATJHABENG MUNICIPALITY	0828822441	majubeng.madebe matjhabeng.co.za	<i>[Signature]</i>
5					

ATTENDANCE REGISTER: MINING CHARTER COMMUNITY CONSULTATION

M. J. 2 MS



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA



MATJHABENG LOCAL MUNICIPALITY

ATTENDANCE REGISTER MINING CHARTER COMMUNITY CONSULTATION

18 November 2016

Event Venue:
Event Time:

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

NO	NAME & SURNAME	ORGANISATION	TEL	EMAIL	SIGNATURE
1					
2					
3					
4					
5					

M. J. Z. M.



Mineral Resources

REPUBLIC OF SOUTH AFRICA



MATJHABENG LOCAL MUNICIPALITY

18 November 2016

Toronto Community Hall, Welkom CBD

Event Time: 10:00 – 12:30

NO	NAME & SURNAME	ORGANISATION	TEL	EMAIL	SIGNATURE
1	Mr. [illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2	Mr. [illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3	Mr. [illegible]	[illegible]	[illegible]	[illegible]	[illegible]
4	Mr. [illegible]	[illegible]	[illegible]	[illegible]	[illegible]
5	Mr. [illegible]	[illegible]	[illegible]	[illegible]	[illegible]

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18 November 2016

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

NO	NAME & SURNAME	ORGANISATION	TEL	EMAIL	SIGNATURE
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4		Turbo Tech Energy Trading	083 665 2870	hidroturbo5@gmail.com	
5	Mpho Chomane	Felix Group	018 371 0446	Felixgroup@gmail.com	

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4	Jeanette Sebato	M. Sebato Investments PTY LTD	0721226728	jeanetteSebato@gmail.com	
5	Curis, River Koto Luthi Mosis-ma	NIENI Forum Tribocole TAC	073 2161615 061 257 1111	ChrisVeko@gmail.com luthi@tribocole.co.za	

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DATE: 18 Nov 2016

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COMMUNITY CONSULTATIONS ON THE REVIEWED MINING CHARTER 2017.

The following communities and community organisations consulted on the Reviewed Mining Charter 2017.

19/07/2016	Various Community Organisations and Representatives including: (a) Centre for Environmental rights. (b) Mining Affected Communities United in Action (MACAU). (c) Serodumo SA Rona Community Based Organization. (d) Bulelani Mkhonto.
20/07/2016	Centre for applied legal studies.
26/07/2016	South African Mining and Beneficiation Co-operatives (SAMBCO).
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.

DATE.	STAKEHOLDER.	COMMENTS.	DMR RESPONSE.
19/07/2016	Various Community Organisations and Representatives including: (a) Centre for Environmental rights.	(a) Serodumo acting on behalf of its members wishes to exercise the right to equally voice the concerns on the draft reviewed Mining Charter. However, given the time	<p>DMR's considered views.</p> <p>The Charter was gazetted for a 30 days period as defined in the MPRDA to solicit public comments</p>

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<p>(b) Mining Affected Communities United in Action (MACAU).</p> <p>(c) Serodumo SA Rona Community Based Organization.</p> <p>(d) Bulelani Mkhonto</p>	<p>period allocated for making submissions, it is not practical for the CBO to adequately brief its members residing in the far flung rural areas and engage meaningfully on these important issues.</p> <p>We plead for a sixty (60) days extension for the "meaningful participation" to indeed take place within our communities and constituency.</p> <p><i>(b) Definitions</i></p> <p>The definition of community should be expanded to permit mines to apply the zone of influence definition.</p> <p><i>(c) Objects</i></p> <p>The preamble. Vision, mission should recognize that a proliferation of communities living in abject poverty continues to be largely characteristic of</p>	<p>on same. The Department is open to further meaningful and progressive proposals on the draft Charter.</p> <ul style="list-style-type: none"> o <i>Definitions</i> <p>The Department will consider definition of the following terms as suggested by stakeholders: Capital Goods, Services, Consumables, Multinational suppliers of goods, Economic interest, EME's, QSE's, BEE transaction, <i>material constraints</i>, Empowerment transaction, enterprise development, small business development, BEE entrepreneur, host community, life of mining right, local community and ring-fenced. The Department will further expand on the existing definition of the</p>
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	the surroundings of mining operations. Charter should make reference the Sustainable Development Goals.	following terms; BEE compliant (to link it with specific Dti Code level), Labour sending area (clarify extraterritorial application), Black people (to include juristic persons), Core and critical skills (align with the Dti Codes), ESOPS (to expand on the meaning).
	<p>(d) <i>Ownership</i></p> <p>Target for this element should be informed by the population dynamics, the Black people form the majority of the population, and the 26% should thus be increased to 80%. Communities do not want to be represented by traditional leaders in the proposed Community Trust. Trust representation should reflect the democratic principles and widened to other democratic forums chosen by communities. Charter still accords 5% for Community Development without clarity on how such will work or it is even calculated. This is despite huge sacrifices made by communities.</p> <p>(e) <i>Procurement</i></p>	<p>o <i>Objects</i></p> <p>The department will consider the inclusion of reference to ownership in the objects of the Mining Charter.</p> <p>o <i>Ownership</i></p> <p>The department will review the ownership element taking into account the stakeholder concerns relating to SPV structure, relating to the ownership target, empowerment at company level,</p>

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<p>The 1% of annual turn-over ought to be extended to multinational suppliers of services. The funds to contribute towards impactful and sustainable development of communities. Increased targets are welcome and appreciated despite the lack of provision for ensuring that a % of this expenditure occurs locally.</p> <p>(f) <i>Beneficiation</i></p> <p>No comments received on this element of the draft Reviewed Mining Charter, 2016.</p> <p>(g) <i>Employment Equity</i></p> <p>What should have been 40% across the board by 2014, should be 51% by 2020 now. Executive Management (Board)- 51 %, Senior Management (Exco)- 51%, Core & Critical (specialized engineering)Skills -51%, Middle Management -- 51%, Junior Management -- 51%.</p> <p>(h) <i>Human Resource Development</i></p>	<p>expand on trust representation, funding mechanisms, and provide clarity on consolidation of empowerment transactions.</p> <ul style="list-style-type: none"> o <i>Procurement</i> <p>The department will provide clarity and consider stakeholders submissions regarding the use of specific percentage targets, establishment of the Social Development Trust Fund, ring-fencing the funds for supplier development, define undefined terms, replace BEE compliant on services with Black owned, use of NPAT and annual turnover, verification of samples to be done by suppliers, provision for exemption. The use of Actual Procurement Spend and Total Measured Procurement Spend.</p>
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		<p>No comment received on this element of the draft Reviewed Mining Charter, 2016.</p> <p><i>(i) Mine Community Development</i></p> <p>Contribution to be made towards sustainable and scalable programmes and projects should the mine close to ensure longevity. It is also amiss that the SLP is not made mention of noting that this has been the main mechanism for ensuring LED in communities. What is the relation between the 1% annual turnover and SLP requirements?</p> <p><i>(j) Housing and Living Conditions</i></p> <p>No comment received on this element of the draft Reviewed Mining Charter, 2016.</p> <p><i>(k) Application of the Mining Charter for permits/licences granted in terms of the Diamonds Act and the Precious Metals Act</i></p> <p>No comments received on this element of the draft Reviewed Mining Charter, 2016.</p>	<ul style="list-style-type: none"> o <i>Beneficiation</i> <p>The Department will provide the required clarity regarding guidelines and mechanisms for implementation of the 11% offset against the value of beneficiation.</p> <ul style="list-style-type: none"> o <i>Employment Equity</i> <p>The department will consider separation of executive and non-executive directors, Exco and senior management, the use of EAP's vs. Demographics, removing reference to Black on the employees with disabilities, the use of specific percentages per target.</p> <ul style="list-style-type: none"> o <i>Human Resource Development</i>
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<p>(l) <i>Reporting (Monitoring and Compliance)</i></p> <p>The methodology for monitoring and evaluation needs to be fully outlined to remove any ambiguity which may exist. There must be a clear process to validate data and compliance to the Charter targets.</p> <p>(m) <i>Applicability of targets</i></p> <p>No comments received on this element of the draft Reviewed Mining Charter, 2016.</p> <p>(n) <i>Transitional arrangements</i></p> <p>No comments received on this element of the draft Reviewed Mining Charter, 2016.</p> <p>(o) <i>Non compliance</i></p> <p>There must be collaboration with communities to ensure that mining operations are held accountable for noncompliance with the Charter objectives.</p> <p>(p) <i>Review of the Charter</i></p>	<p>The department will consider the usage of the learner Programme matrix, clarify expenditure on non-employees and recognition of expenditure on mandatory sectorial training.</p> <ul style="list-style-type: none"> o <i>Mine Community Development</i> <p>The department will consider the use of NPAT over revenue, provide clarity regarding the linkages with SLP's and IDPs.</p> <ul style="list-style-type: none"> o <i>Housing and Living Conditions</i> <p>The department will provide clarity regarding the measurability of compliance with this element and revision of the Housing and Living Conditions Standards,</p> <ul style="list-style-type: none"> o <i>Application of the Mining Charter for</i>
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		<p>The review of the Charter and its effectiveness every five years should be incorporated.</p> <p>(q) Scorecard</p> <p>No comments received on Charter scorecard.</p>	<p>permits/licences granted in terms of the Diamonds Act and the Precious Metals Act</p> <p>The department will consider increased targets, definition of terms (EME's and QSE's) and proper alignment of the Charter with the Diamonds Act and the Precious Metals Act.</p> <ul style="list-style-type: none"> o Reporting (Monitoring and Compliance) <p>The department will consider development of reporting guidelines.</p> <ul style="list-style-type: none"> o Applicability of targets
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The department will consider replacement of reference to life of mine to life of mining right.

- *Transitional arrangements*

The department will provide clarity regarding progressive realization of targets. The Charter will apply to both existing rights and new mining right applications. The three years transitional period is sufficient to enable existing right holders to adjust their empowerment credential to comply with the reviewed charter requirements.

- *Non compliance*

The department will expand on this element by making express reference to the relevant

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		<p>provisions of the MPRDA, i.e. section 47, 93, 98 and 99.</p> <ul style="list-style-type: none"> o <i>Review of the Charter</i> <p>The department will reconsider the wording used in this element to provide certainty.</p> <ul style="list-style-type: none"> o <i>Scorecard</i> <p>The department will consider the removal of reference to HDISA and replace same with Black persons.</p>
	<p>Bulelani: Black community would like far more than 26%. Black people are approximately 89% of the population, Coloureds, Indians and Whites sharing the remaining 11%. That means that should be the percentage you should make amendments in proportion to. 26% is an insult to our democracy- because democracy means the majority shall rule,</p>	<ul style="list-style-type: none"> • The suggested 26% is a minimum, there is nothing that precludes a mining company from going beyond this minimum target. The Department is open to alternative proposals to help drive meaningful, broad based

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	<p>however Department of Mineral Resources, is counter-revolutionary.</p> <p>DMR should learn a lot from the SABC....we want 90% across the board.</p> <p>This includes ownership, skills development, enterprise development, black representation at executive level and black representation on all boards (directorship), organisations, charters and councils.</p> <p>I wish our concerns will be considered by you! We demand 90% and not 26%.</p> <p>Thank you for being conscious driven.</p> <p>MACUA</p> <ul style="list-style-type: none"> Macua raised concerns about absence of DMR senior Management officials such as the Minister, Deputy Minister and Director General at the consultation workshop. 	<p>Black transformation.</p> <p>The DMR officials responded as follows:</p> <ul style="list-style-type: none"> That senior officials were engaged in other departmental activities and that the team dispatched to
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	<ul style="list-style-type: none"> • They indicated that the organisation rejects the draft Mining charter and that it has developed its own peoples mining charter. • It also raised concerns on the usage of English to draft the Charter as barrier and called for the DMR to develop Charter using all the South African languages. • They threatened that Macua would come back to Department to protest against the adoption of the Mining Charter document. 	<p>deal with the matter was cable of doing so.</p> <ul style="list-style-type: none"> • The Mining Charter developed by the department is the only legal document which will be applied by the department in the processing of application. • The comment on usage of other languages is noted.
	<p>Centre for Environmental Rights (CER)</p> <ul style="list-style-type: none"> • Mining affected communities were not consulted either by the Minister or the DMR which deprived them of the opportunity too meaningfully participating in the drafting of the 	<ul style="list-style-type: none"> • It is the DMR's view that the Minister gave all interested and affected parties an opportunity to be involved in the development of the draft charter by publish the draft

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	<p>mining Charter which has an impact on the procedural fairness of the process.</p> <ul style="list-style-type: none"> Minister to extend the period for submitting comments on the draft mining charter and facilitate takes between the department and the affected mining communities. The draft mining charter does not address the socio-economic conditions of the mine host communities. The provision of the draft mining charter failed to promote the equality in the mining industry. The draft mining charter does not go far enough to ensure that communities and other interested parties are properly consulted on the development decision with communities. 	<p>charter for public comments and by arranging consultation workshops.</p> <ul style="list-style-type: none"> Noted, the request for an extension will be communicated with the Principals. The Mine community element of the mining charter is intended to ensure that mining companies contribute towards socio-economic development of communities within which they operate. The MPRDA Bill before Parliament seeks to amongst others strengthen consultation with land owners and lawful occupiers.
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20/06/2017	Centre for Applied Legal Studies.	<ul style="list-style-type: none"> The draft Mining Charter to include mining affected communities' decision making on the environmental matters. 	<ul style="list-style-type: none"> The Environmental authorisation process in line with NEMA includes consultation with interested and affected parties.
		<p>I. Opportunities for public participation in the draft Reviewed Mining Charter appear to have been less than adequate. First, DMR when publishing the draft Reviewed Mining Charter on Friday 15 April 2016 in the Government Gazette, did not upload the bill on the website. As a result the bill was inaccessible to much of the public who do not enjoy ready access to a government gazette. This is likely to disproportionately exclude mine-affected communities, workers as opposed to well-resourced groups and individuals. For many stakeholders, therefore, the month</p>	<p>I. The Department submits that the 30 days period for public comments was sufficient and is open to further engagements on the draft Charter before it is gazetted for implementation.</p> <p>II. Communities are allocated stake in the ring fenced ownership element as part of the comprehensive benefits including the 1% community development requirement. The said percentages are just minimums and a mining operation is not precluded from going beyond the stated minimum percentages.</p>

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	<p>period cannot be regarded as commencing from 15 April. Further, given the significant barriers experienced by members of directly affected groups such as mine-affected communities in relation to resources, location and language, and the need for a charter to reflect their needs and priorities, it is vital that more extensive public participation be undertaken than a mere 1 month notice and comment period on a finished draft</p> <p>II. It is apparent from reading the obligations set out in the draft Reviewed Mining Charter that the interests of communities are still not accorded central priority. This is illustrated by the failure to include community development</p>	<p>III. Communities are welcome to approach the Department for assistance with the challenges regarding mining operations.</p> <p>IV. The Department will consider reconciling the Charter and SLP to remove any ambiguities. The 1% is intended to create certainty and the Department supports actual expenditure.</p> <p>V. Refer to point V above.</p> <p>VII Compensation is regulated in terms of section 54 of the MPRDA read with NEMA and MHSA.</p> <p>The Department will consider reinstating the sustainable development element.</p>
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	<p>expenditure as one of the targets for which anything short of 100% compliance is non-compliance. The benefits conferred by the Charter are still not commensurate with the sacrifices they undergo in order for mining to occur. A far larger share than a portion of 5% (designated for communities and workers) should go to community development.</p> <p>III. There are community calls for effective and independent grievance mechanisms for rights violations and failure to meet social obligations by mining companies and an independent capacity development fund to assist communities in accessing the economic planning, ecological and legal (etc) knowledge enabling</p>	<p>Viii. The concern is noted, the Department will reconsider the wording used.</p> <p>IX The Department disagrees.</p> <p>X The Department will consider broadening the scope of representation in the Trusts to include communities. Management of trust moneys will be governed by the trust instrument.</p> <p>XI Refer to point X above.</p>
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communities to make informed decisions and participate in decision-making on an equal footing with companies.

IV. The draft Reviewed Mining Charter, under the 'mine community development' section provides that mining companies contribute 'a minimum of 1% of their annual turnover to towards local community development and labour sending areas. Reading the draft Charter does not yield certainty as to whether this 1% is to constitute SLP expenditure or is required over and above SLP expenditure. If the former interpretation is correct, the use of actual (as opposed to projected) turnover is problematic as lower than projected turnover could result

XII The submission is noted, the Department will rework the wording and percentages used.

XIII. The MPRDA provides for compensation in terms of section 54.

XIV This is addressed in the Mine Health and Safety Act, 1996.

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in SLP expenditure being revised downwards.

V. There is no reference at all to SLPs in the draft reviewed mining charter. We therefore call for the clarification, in legislation and policy, of the respective roles of the Charter and SLP systems and for their alignment.

VI. In CALS' preliminary research on the implementation of the SLP system, a persistent theme echoed across a variety of role players in community organisations, local government and in the mining sector is of a lack of effective communication and co-ordination. The draft Reviewed Mining Charter does not indicate the mechanisms for co-ordination or provide guidance on how this should be

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achieved. In this regard, the development of a new Charter represents a missed opportunity.

VII.

The Charter does not recognise the need to compensate for environmental losses as a result of mining. The lack of attention to environmental justice is also reinforced by the removal of sustainable development from the objectives of the Charter.

VIII.

We welcome what appears to be a new requirement that the procurement targets for capital goods and consumables must be manufactured in South Africa. This is critical as if the ultimately goes offshore to purchase goods, for example from developed countries, the desired impact of stimulating domestic industrial development

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and job creation is largely negated. However, the effect of this is blunted by the ambiguity of the wording used which, in both cases of capital goods and consumables refers to 'a minimum of...of locally manufactured consumables from BEE compliant manufacturing companies.' If read literally, this would mean, rather than requiring a specific percentage of goods that are both procured from BEE compliant companies and are locally manufactured, that instead only those goods that are manufactured locally need to be from BEE compliant companies. To achieve what seems to be the purpose of the provision, this ambiguity should be removed

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- IX. There should be a requirement that companies, where possible, procure a proportion of goods and services from local BEE compliant companies based within the area surrounding the mine or the municipality and for companies to report on this.
- X. Our concerns regarding the Social Development Trust Fund (SDTF) are that provisions do not indicate how spending will be directed to communities. Furthermore communities are excluded from list of stakeholders who must be trustees. We suggest that multinationals should be required to contribute to the SLPs of the mines they supply, 'through a transparent, ring-fenced allocation of funds.'

XI.

It is important that the charter regulates the composition of the board of trustees for the community trusts. However, by only requiring traditional leadership to serve as community representatives on the board, the effect is to entrench the power of traditional leaders and undermine the self-determination of members of traditional communities. There is a pattern of community members alleging that traditional authorities are usurping the community share for their own benefit. It is therefore critical that democratically elected community organisations should also be accorded a right to be represented on the board. It is critical that communities are able to choose their representatives.

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XII. The draft Reviewed Mining Charter represents an improvement in that there are gender specific targets (for black women) representation at various levels of the company. It is not clear whether the targets refer to the percentages of the share of the positions to be held by black people or a percentage of all positions. If the former is the case, these targets are very low. For example, the draft Reviewed Mining Charter provides for a minimum of 50% Black executive directors, '25% of which must be black female.' The literal meaning of this would be that 25% of 50% of executive directors are to be black women, i.e. 12.5%. This would be a very low target. The other

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interpretation would be 25% of directors would be black women.

XIII. The Amended Charter still fails to respond to the manner in which the externalised costs of mining fall predominantly on women. These costs include the loss of economic autonomy, where many women in rural areas lose access to arable land. Where agriculture is replaced by mining, relatively few women, in practice, are employed on the new mines with the result that the economic marginalisation of women is exacerbated.

XIV. Further the Charter does not address barriers to the advancement of women in the workplace. It does not provide for measures to address harassment and gender-based violence on

		<p>mines. It does not set a deadline for all mines to have equipment for women, separate bathrooms and sanitation needs for women. It does not require a timeframe for on-site childcare facilities for parents working on the mine.</p>	
26/07/2016.	<p>South African Mining Beneficiation Co-operatives (SAMBCO)</p>	<p>I. According to the Definition of the BBEE Act's first two Objectives:</p> <p>«The number of Historical disadvantaged people must be increased in Management, Ownership, Control of Enterprises or Co-Operatives and Productive assets.</p> <p>«B. Facilitating Ownerships and Management of enterprises and Productive Assets by Communities, Workers, Co-Operatives and other collective enterprises.</p> <p>At SAMBCO we believe that the Two Primary objectives of the BBEE Act can</p>	<p>I. Point noted, DMR will consider alternative models to give effect to broad based and meaningful transformation of the mining industry.</p>

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be easily achieved in the Mining Charter through Mining and Beneficiation Co-Operatives. Co-Operatives have proven to be inclusive in Nature and can benefit a larger portion of the Nation/population taking into account the poorest of the poor.

At SAMBCO we believe that "Meaningful Economic Participation" can only be achieved through BEE Transactions with Co-Operatives in the form of Community Co-Operative, ESOP's Co-Operatives and Workers Co-Operative, such Co-Operatives will be able to divers into Services Co-Operatives, Consumables Co-Operatives and Capital Goods Co-Operatives, Housing Co-Operatives and Health Co-Operatives.

According to the Mining Charter's first two Objectives:

II. Refer to point I above.

III. The suggestion is noted.

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Promote equitable access to the Nation's Minerals resources to all the people of South Africa.

Substantially and meaningfully expand opportunities for black people to enter the mining and minerals industry and to benefit from the exploitation of the nation's mineral resources.

II. We Request that the Mining Charter must give a minimum of 10% ownership per Mining Right to Co-Operatives to enable the growth of Co-Operatives or Artisanal Small-Scale Miners and a Minimum of 26% were there is no BEE partner or the Miner is struggling to find suitable BEE partners.

III. It is requested that the DMR must empower Co-Operatives with the 6 152 Abandoned Mines, We also

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	request that mining Dumps be given to Co-Operatives, dumps are terrorizing communities with illegal miners or Zama-Zamas and Co-Operatives in the form of Communities, un-employed women and youths will eradicate the Zama-Zamas from the face of our economic landscape.	
03/11/2016.	<p>Traditional leaders in North West Province, Bojanala District.</p> <ul style="list-style-type: none"> • The Department of Mineral Resources conducted an engagement with the traditional leaders on the Gazetted Draft Mining Charter, 2016. The meeting was attended traditional leaders and was addressed by the minister of Mineral Resources and Premier of the North-West Province. • Traditional leaders expressed their support of the draft Mining Charter and enquired on how the draft document will assist them in applying Mining 	<p>Traditional leaders in North West Province, Bojanala District.</p>

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	<p>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.</p> <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, especially SLP. 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 	<ul style="list-style-type: none"> • DMR welcome the support for beneficiation and explained that beneficiation will further be elaborated on in the MPRDA Bill and the MPRDA Regulations. • Submission noted, DMR is working on strengthening enforcement.
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		communities lives through the Small towns and Dorpies strategy which can be complemented by the benefits to be derived from the provisions of the Mining Charter.	
18/11/2016.	Community consultation in Free State Province, Matjhabeng Local Municipality.	<p>• 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.</p> <p>• IDP's are key in driving local economic development. There is no channel of communication between the</p>	<p>• The Deputy Minister is on a work trip overseas and is definitely working hard to ensure the issues of ex-mine workers are resolved.</p> <p>• Department is committed to improving relations with its stakeholders and has an open door policy.</p> <p>• The Charter responds to the issue of alignment of SLP contributions to IDP's.</p>

	<p>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. • Local Black people do not have procurement opportunities in Welkom, instead they take people from Johannesburg and there are lot of red tapes. 	<p>Provision is made for SLP to be aligned to IDP's.</p> <ul style="list-style-type: none"> • 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 the draft mining charter amongst others seeks to address same. • Comment on opportunities for local people has been noted and the DMR will consider. It must however be kept in mind that the MPRDA provides that mineral resources of this
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		<ul style="list-style-type: none"> • Mining dumps are being 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. • 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. 	<p>Country belongs to all the people of South Africa.</p> <ul style="list-style-type: none"> • Benefits for mine communities who are negatively impacted by mining by virtue of their proximity are will be addressed in the draft mining charter. • Transformation is an ongoing process and government will do all that is necessary to ensure that Broad based and meaningful economic empowerment becomes a reality. • Government is stepping up efforts to deal with issues of illegal mining and Zama-Zama's. A multi-stakeholder task team is dealing with these issues in a coordinated and multidisciplinary manner.
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		<ul style="list-style-type: none"> • 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 a mine? 	<ul style="list-style-type: none"> • Environmental inspectorate has been capacitated to deal with these kinds of transgressions. • Mine closure is informed by a variety of factors including completion of activities by the mining operation and lodgement of an application for a closure certificate. Some mines are put on care and maintenance and not necessarily closed.
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"> • 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 making provision for women and Black people to own minerals.

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	<ul style="list-style-type: none"> • More clarity on how the agency referred to on the presentation is going to unfold. • What is the department doing to ensure that the mines comply with the procurement element? • 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? • Is the SLP not supposed to be discussed with the communities 	<p>and hold management positions in mining companies.</p> <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 has been defined to mean where a majority of employees are sourced. • Every mining company is being monitored in line with terms and
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		<p>through consultation and engagement?</p> <ul style="list-style-type: none"> • What are the consequences of non-compliance with the SLP commitments? • What constitutes a labour sending area? • What is the department doing with non-compliant companies? 	<p>conditions of the approved right.</p> <p>If the mining company does not comply, then the department can engage in a process which might lead to cancellation or suspension of a right. The laws of this Country provides that a companies must be given an opportunity to correct non-compliance before the department can issue suspension or cancellation orders.</p> <ul style="list-style-type: none"> • The draft mining charter provides that social and Labour plans must be in line with the Municipal 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.</p> <ul style="list-style-type: none"> • SABS would conduct verification on goods. The responsibility to verify lies with the supplier. • Both the draft charter, MPRDA Bill and SLP guidelines makes provision for Mining companies to consult with all relevant structures prior to finalisation of the SLP.
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Our Ref: Mr G Pilane/MMR0001

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

Date: 12 October 2017

The Honourable Justice D Mlambo and Justice A P Ledwaba
Office of the Judge President & the Deputy Judge President
High Court of South Africa
Gauteng Provincial Division, Pretoria
Cnr Madiba & Paul Kruger Streets
Pretoria

By email to: Ndungane@judiciary.org.za

Copied to: KRamokoka@judiciary.org.za

Dear Judge President Mlambo & Deputy Judge President Ledwaba

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

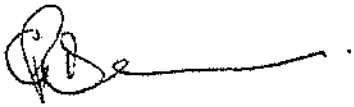
1. We act for the respondent, the Minister of Mineral Resources ("**our client**") in the above review application.
2. Norton Rose (per Mr Andre Vos) acts for the applicant, the Chamber of Mines of South Africa.
3. We refer to the correspondence from Mr Vos copied to yourself and dated 11 October 2017.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

GOITSEONA PILANE ATTORNEYS INC.

Mobile: +27 83 445 3437

5. We respectfully suggest that if the Deputy Judge President is inclined to accept the above proposal, the hearing be extended by a further court day, from the current period of 13 and 14 December, to 15 December 2017. This is simply because of the number of third parties who seek leave to intervene.
6. Should you deem it necessary or desirable to hold a further meeting to deal with the above, our counsel will endeavour to make themselves available at your convenience.

Yours sincerely,



Goitse Pilane

Copied to:

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

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

Copied to:

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Attorneys for the Intervening Party (Solidarity)

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

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

M.J.Z M.K

Goitse Pilane

From: Goitse Pilane
Sent: 12 October 2017 08:40 PM
To: 'Naledi Ndungane'; 'Kgomotso Ramokoka'; 'Engela Groenewald'
Cc: 'Vos, André'; 'chris@fpinc.co.za'; 'mothusi@fpinc.co.za'; 'Jan-Daniel Claassen'; 'Wandisa.Phama@wits.ac.za'; 'Michael@lhr.org.za'; 'Louise@lhr.org.za'
Subject: JUDICIAL REVIEW APPLICATION 2017 MINING CHARTER: CHAMBER OF MINES v MINISTER OF MINERAL RESOURCES - CASE NO. 43621/17
Attachments: Letter to the JP & the DJP - 12 Oct 2017.pdf

Dear Judge Mlambo and Judge Ledwaba

I attach a letter for your attention and consideration.

You will note that I have copied the following parties in the mail:

Mr. Andre Vos, Director, Norton Rose Fulbright South Africa Inc.
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Attorneys for the Applicant (The Chamber of Mines of South Africa)

Mr Finger Phukubje and Mr Modisane, Finger Phukubje Attorneys
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Attorneys for the Intervening Parties (Lesetiheng Community, Sifikile Community, Babina Phuthi-Ba-Ga-Makola Community and Kgatlu Community)

Kind regards

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