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Appendix 1a: Schedule of Interviews

Contact Name	Organisation	Position	Outcome
Andile Thloale	ABVA	CEO	Very difficult to contact
Ann Bernstein	CDE	Director	Refused interview request
Bobby Godsell	BLSA	Chairman	Effectively refused interviews
Bonang Mohale	Chairman	Shell SA	Interviewed
Cas Coovadia	Banking Council	CEO	Did not revert with promised interview date
Chris Malkane	Cosatu	Head of Policy	Did not respond to interview request
Dirk Hermann	Solidarity	Deputy gen secretary	Did not respond to interview request
Dudu Msomi	Busara Leadership	CEO	Difficult to contact
Chris Malekane	COSATU	Head of Policy	Did not respond to interview request
Catherine Mvelasi	Gauteng Province	Chief Director	Interviewed
Confidential interview	re Consulta Report	Anonymous	Interviewed
Tony Balshaw	Grant Thornton	Partner	Interviewed
Nico Olwagen	Grant Thornton	Researcher	Could not establish contact
Wendy Luhabe	Private	Author & Businesswoman	Interviewed
Sam Motsuenyane	NAFCOC	Retired President	Interviewed
Dudu Msomi	Private	Businesswomen and columnist	Difficult to contact
Gaba Tabane	BMF	CEO	Did not come to scheduled meeting. Sent Tshepo
Herbert Mkhize	NEDLAC	Executive Director	Did not respond to interview request
Herman Mashaba	Black Like Me	Founder and ex-director	Interviewed
Hilary Joffe	Business Day	Editor	Interviewed
Israel Skosana	NSB	Ex-Director	Interviewed
Jabulani Mthembu	SANTACO	President	Did not respond to interview request
Jacinto Rocha	Consultant	DMR and ex- DG DMEA	Did not respond to interview request
Jacob Maphuta	DTI	Sector Charters	Interviewed
Jenny Cargill	Private	Author and Consultant	Interviewed
Jerry Vilakazi	CEO	BLSA	Did not come to scheduled meeting. Sent Kganki
Duma Gqubule	BEECOM	Part of BEECom team and active in BEE arena	Interviewed
Julian Ogilvie-Thompson	Anglo American	Ex-Chairman	Interviewed
Busi Dlamini	Financial Services Charter	CEO	Interviewed
Kganki Matabane	BUSA	Exec Dir: Transformation Policy	Interviewed
Raheema Iso	Business Womens' Assoc	CEO	Interviewed
Lot Ndlovu	BMF	Founder	Could not establish contact
Louis McLaren	AHI	Board member in charge of BEE	Did not respond to interview request
Mamphele Ramphele	Circle Capital	CEO	Refused interview request
Maria Ramos	CEO	Barclays	Interview declined by DL as it came very late in the process
Mathibela Mankge	DTI	Director: BEE Empowerment & ED division	Interviewed
Michael Spicer	BLSA	CEO	Interviewed
Mike King	Anglo American	Ex- CFO	Referred me to Julian Ogilvie-Thompson
Moeletsi Mbeki	Endemol	CEO	Took long time to get interview. Not relevant when finally agreed to.
Mzolizi Diliza	Chamber of Mines	CEO	Did not respond to interview request
Ndaba Ntsele	Pamodzi Holdings	Founder	Did not respond to interview request
Neren Rau	SACCI	CEO	Interviewed
Neva Makgetla	DBSA	Economist	Interviewed
Nomonde Mesetywa	DTI	Chief Director: BEE	Did not come to scheduled meetings. Sent Taki & others
Paul Browning	Private	Author of book on BEE	Interviewed
Peet Strydom	Sanlam	Retired member of Sankorp BEE team	Interviewed
Prince Booi	Gauteng Province	Procurement service manager	Interviewed
Rob Davies	DTI	Minister	Ignored interview requests
Robert Mhlambi	NAFCOC	CEO	Interviewed
Roger Baxter	Chamber of Mines	Chief Economist	Effectively refused interview request
Taki Tambani	DTI	Director BEE Advisory Council	Interviewed
Tshepo Marumele	BMF	BMF Membership Manager & BEE officer	Interviewed
Vusi Khanyile	Thebe Invest.	CEO	Refused interview request
Vuyo Jack	Empowerdex	CEO	Effectively refused interview request
Xolani Qubeka	BBC	Managing Director	Did not respond to interview request

Appendix 1b.

Introductory email and formal interview request

Thursday 11 March 2010 9:34 PM

Subject: Appointment to discuss PhD research
Date: Thursday 11 March 2010 9:34 PM
From: Don Lindsay <don.lindsay@iafrica.com>
To: <nmesatywa@thedti.gov.za>
Cc: <smadisha@thedti.gov.za>

Good morning Ms. Mesatywa,

Further to my conversation with Salamina, I am doing a PhD at Wits University in which I am exploring the impact of black empowerment on the relationship between business and the state and I would very much appreciate the opportunity to schedule a brief meeting with you both to open a channel of communication with your department as well as to gather data for the research.

I would specifically like to address the following areas with you but please feel free to add anything that you feel might be of interest:

- Trends in compliance with B-BBEE
- The establishment of the Advisory Council and its plans
- Are there any plans to develop or advance the programme of B-BBEE?
- Developments in the area of sector charters
- Systems for the measurement of B-BBEE
- Systems for business consultation on the issue of B-BBEE with the dept.
- Any other matters you feel might be of value to the research effort

As regards confidentiality, I undertake not to use the content of our meeting for any purpose other than to support my academic endeavours but if there are any matters that you would not like to be quoted on, or not have recorded, please feel free to indicate this in the meeting.

I will be away myself from the 15th to the 22nd March.

Should you wish to confirm my bona fides, please feel free to contact my supervisor, Professor Roger Southall at the Sociology Dept. at Wits – 011 717 4451 email: roger.southall@wits.ac.za.

Thank you for your time and interest.

Regards,

Don Lindsay
082 817 1971

Appendix 1c.

Informed Consent Form



Sociology Department Faculty of Humanities

Informed Consent Form

11 May 2010

Dear Ms. Makketla,

Thank you for agreeing to participate in this interview, the purpose of which is to gather data for my PhD research.

The study seeks to gain an understanding as to the impact that black empowerment is having on the relationship between the business community and the state and the findings of the research will assist in the formulation and implementation of BEE policy in the future.

What You Will Be Asked to Do in the Research: You have been approached as the organisation you represent or you, personally, play a role in areas pertinent to the study. You will therefore be asked for your insights and opinions on the matter as well as for any suggestions that you think might advance the research process. Should there be any matters about which you are uncomfortable, please do not hesitate to bring these to my attention or that of my supervisor Professor Roger Southall (contact details below).

Benefits of the Research to You: Black empowerment represents a major challenge for many people in business, government and civil society. I would hope that by participating in the research process you will be able to process some of your thoughts on the issue.

Voluntary Participation: Your participation in the study is completely voluntary and you may elect to cease your participation at any time. Your withdrawal will not prejudice any relationship you may currently have with the University of the Witwatersrand.

Confidentiality: All information you supply during the research will be held in confidence and, unless you specifically indicate your consent, your name will not appear in any report or publication of the research. Your data will be safely stored and only research staff will have access to this information.

University Contacts: If you have questions about the research in general or about your role in the study, please feel free to contact me on 082 817 1971 or email don.lindsay@iafrica.com.

You may also contact my supervisor, Professor Roger Southall on 011 717-4451, email: roger.southall@wits.ac.za

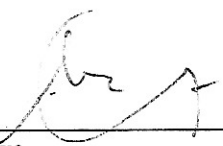
Thank you for your participation. It is much appreciated.

A handwritten signature in black ink, appearing to be 'Don Lindsay'.

Don Lindsay

Please indicate your consent to participate in this research process by signing below:

I INSUP MAKGETA consent to participate in the study being conducted by Don Lindsay for his PhD dissertation. I have received an information sheet prior to the interview. I understand the nature of this project and wish to participate. I am not waiving any of my legal rights by signing this form.



Signature
Participant

12 MAY 2010
Date

Appendix 1d.

Consent to Record



Faculty of Humanities Sociology Department

Consent To Record

I Dr. SM Motsuenyane consent to the recording of my interview with Don Lindsay. I understand the information gathered in this interview is to be used for purposes of his PhD dissertation. I have received prior information regarding the research and interview purpose and I understand the nature of this project. I wish to participate and agree that the conversation be recorded. I am not waiving any of my legal rights by signing this form.

Sam Motsuenyane
Signature

Participant

2012-12-05
Date

Appendix 2.

Results of Katlego Syzygy (Pty) Ltd 2009 market research

Status of prospect	No. of Companies	Percentage of Total
Got enough ED points for now	50	21%
Not doing ED.	2	1%
Nothing in place yet but interested	15	6%
Client doesn't understand ED/BEE	16	7%
Not interested. No reason given	11	5%
Did not return calls	40	17%
BEE being handled by other org in group or head office	8	3%
Orgn. not making decisions re ED/BEE	36	15%
Using Competitor	17	7%
No info	40	17%
Total	235	100%

Summary

Organisations handling ED	75	32%
Organisations not handling ED	120	51%
No information	40	17%
	235	100%

ED = The Enterprise Development element of the B-BBEE Scorecard

Appendix 3

CHARTER FOR THE SOUTH AFRICAN PETROLEUM AND LIQUID FUELS INDUSTRY ON EMPOWERING HISTORICALLY DISADVANTAGED SOUTH AFRICANS IN THE PETROLEUM AND LIQUID FUELS INDUSTRY CONTENTS

- Preamble
- Scope of Application
- Interpretation
- Supportive Culture
- Capacity Building
- Private Sector Procurement
- Public Sector Procurement
- Access and Ownership of Joint Facilities
- Refining Capacity
- Retailing/Wholesaling
- Upstream
- Financing
- Terms of Credit to HDSA Companies
- Regulatory Framework and Industry Agreements
- Synfuels Supply
- Consultation, Monitoring, Evaluation and Reporting

Preamble

Mindful of:

- the imperatives of redressing historical social and economic inequalities as stated by the Constitution of the Republic of South Africa, inter alia Section 9 on Equality (and unfair discrimination) in the Bill of Rights, and section 217.2 on procurement where the "organs of state" may implement a "procurement policy providing for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination",
- the policy objective stated in the Energy Policy White Paper to achieve "Sustainable presence, ownership or control by historically disadvantaged South Africans a quarter of all facets of the liquid fuels industry or plans to achieve this"
- the Black Economic Empowerment Commission's definition of Empowerment as "an integrated strategy aimed at the substantially increasing black participation at all levels of the population and:

Noting

- the enactment of the Preferential Procurement Framework Act (No 5 of 2000).
- the Employment Equity Act (No 55 of 1998), The Competition Act (No 89 of 1998) (Also ref. to the Amendment Act No 35 of 1999 and subsequent amendments), The Skills development Act (No 97 of 1998), the signatories have developed this Charter to provide a framework for progressing the empowerment of historically disadvantaged South Africans in the Liquid

Scope of Application

This Charter applies to the privately owned parts of the industry, and to all parts of the value chain, inter alia:

- Exploration and production of Oil
- Liquid fuels pipelines; Single Buoy Mooring's; depots and storage tanks
- Oil refining and synthetic fuel manufacturing plants, including lubricants
- Transport, including road haulage and coastal shipping
- Trading, including import and export v Wholesale and retail assets/infrastructure.

Interpretation

For the purposes of interpreting the White Paper on Energy Policy, the following terms apply:

- The term Historically Disadvantaged South Africans (HDSA) refers to all persons and groups who have been discriminated against on the basis of race, gender and disability.
- HDSA companies are those companies that are owned or controlled by historically disadvantaged South Africans which operate on a basis to meet all aspects of this Charter. These companies, which operate within and supply the industry, submit affidavits to Government reconfirming their ownership status in December of each year. Government publishes this list annually.
- Ownership refers to equity participation and the ability to exercise rights and obligations that accrue under such ownership.
- Control of a business entity can be achieved in a number of ways;
 - a. a majority shareholding position, i.e. 50% + 1 share;
 - b. an effective controlling shareholding;
 - c. a majority of a board of directors; and/or
 - d. a shareholders agreement.
- Sustainability refers to:
 - medium to long-term viability and adaptability through a presence across all facets of the liquid fuels value chain; o ventures with prospects of long term profitability, and
 - requisite levels of skills and access to technology.
- A quarter of all facets of the liquid fuels industry or plans to achieve this The 25% ownership and control of all facets of the industry that the parties to this Charter are seeking to bring about over a ten year period means HDSAs owning in total, by the end of that period, not less than 25% of the aggregate value of the equity of the various entities that hold the operating assets of the South African oil industry. The parties to the Charter agree that the measurement of the extent of the achievement of this target of 25% of the aggregate value of the equity will be based on the asset values per the audited accounts of the entities concerned.

Supportive Culture

The success of this program depends on the disposition of those who have responsibility for managing the process.

Member companies and government therefore undertake to appoint to such positions, managers who will understand the spirit and background under which these policies were conceived in order to create a supportive and enabling environment for business success.

It is noted that the process that gave rise to this Charter has increased the understanding and cooperation between established industry players and HDSA companies.

Companies undertake to foster a supportive culture with regard to all aspects of this Charter when dealing with HDSAs. Companies subscribe to incorporating and driving a process of transformation and a change of culture in their statements of business principles.

Capacity Building

The South African labour market does not produce enough of the skills required by the petroleum industry, especially the HDSA oil companies. Organized industry and government work together in addressing this skills gap.

In its bi-lateral relations with relevant countries, government endeavors to secure training opportunities for HDSA companies' staff, as well as exchange opportunities with oil companies operating outside of South Africa.

Industry undertakes to build skills of its employees and report on progress annually in an agreed format. v The industry, through the standing consultative arrangements, interfaces with statutory bodies such as SETA (Sectoral Education and Training Authority), in the development of skills development strategies

Employment Equity

Companies publish their employment equity targets and achievements and subscribe to the following: v South African subsidiaries of multinational companies and South African companies focus their overseas placement and / or training programmes on historically disadvantaged South Africans; v identifying a talent pool and fast tracking it; v ensuring inclusiveness of gender; v implementing mentorship programmes; and v setting and publishing "stretch" (i.e. demanding) targets and their achievement. v It is noted that the Capacity Building efforts referred to above will assist in this process.

Private Sector Procurement

Participants in the industry subscribe to and adopt supportive procurement policies to facilitate and leverage the growth of HDSA companies. Such policies include criteria that favor HDSA companies, all else being equal.

Scope:

- The scope of procurement shall include supplies (e.g. Crude), products and all other goods and services.
- HDSA companies are accorded preferred supplier status as far as possible.
- List of suppliers: It is envisaged that information on all HDSA companies wishing to participate in the industry will be collected and published. All participants in the industry will assist in compiling such a list that will inter alia be published by government on the Internet and updated regularly.
- All participants shall continue to deploy every effort to ensure that vessels used in the transportation of supplies or products shall meet all prescribed health, safety and environmental standards.

Public Sector Procurement

Government will engage with State Tender authorities to draw their attention to the White Paper milestones with respect to economic empowerment of historically

disadvantaged South Africans, with the aim of giving effect to supportive procurement policies within this sector.

Access and Ownership of Joint Facilities

Access to large infrastructure for the movement and storage of crude oil and petroleum products, such as SBMs, pipelines and depots and storage tanks, is acknowledged as a critical weakness in the supply chain of emerging companies. In this regard owners of such facilities provide third parties with non-discriminatory access to uncommitted capacity. HDSA companies are to be given fair opportunity to acquire ownership in such facilities.

Refining Capacity

Access to refining capacity also represents a key weakness in HDSA companies' supply chain. Oil refiners and synthetic fuel manufacturers seriously consider:

- selling shares in their facilities to HDSA companies;
- making capacity available to HDSA companies eg through toll refining agreements, and
- including HDSA companies as joint venture partners in any expansions or upgrades.

Retailing/Wholesaling

The parties agree to create fair opportunity for entry to the retail network and commercial sectors by HDSA companies

State Assets

Government undertakes to deal with state assets in a manner that promotes the objectives of the White Paper on Energy Policy and this Charter.

Upstream

The activity of oil and gas exploration and production is acknowledged as a high-risk activity that provides limited opportunities for new entrants. Government continues to make licenses subject to the following conditions:

- All licenses for exploration and production in the country's offshore area reserve not less than 9% for HDSA buy-in.
- All licensees contribute funds toward the "Upstream Training Trust" to fund skills development at various levels. As discoveries are made, further skills development strategies are devised to empower historically disadvantaged South Africans in this sector.

Financing

Finance is a serious constraint for HDSA companies.

- Government assists industry in explaining the milestones in the White Paper on Energy Policy, as well as explaining the needs and characteristics of the industry to financing institutions, both private and public.
- Companies investigate and implement internal and external financing mechanisms for giving HDSA companies access to equity ownership within the South African context.
- Companies to consider engaging HDSA companies in viable strategic partnerships.

Terms of Credit to HDSA Companies

Industry participants acknowledge that terms of credit are important to HDSA companies and agree to take this into account in bilateral activities.

Regulatory Framework and Industry Agreements

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

Synfuels Supply

Parties to the Synfuels Supply agreements will strive to accommodate HDSA companies, which lack the facilities to comply fully with such agreements in the fairest way possible.

Consultation, Monitoring, Evaluation and Reporting

It is recognized that the achievement of the objectives set out herein entails an ongoing process. The DME conducts an annual survey of the industry to evaluate progress in achieving the objectives of the White Paper. Companies submit such data as is required at the end of each year, including employment equity data, procurement targets, etc. The aggregated information is published and forms the basis of the annual forum.

Oil companies have taken major initiatives in this regard and have participated in a first survey earlier this year. Parties hereto participate in an annual forums for the following purposes:

- monitoring progress in the implementation of plans;
- developing new strategies as needs are identified;
- ongoing government/industry interaction in respect of these objectives;
- developing strategies for intervention where hurdles are encountered;
- exchanging experiences, problems and creative solutions;
- arriving at joint decisions; reviewing this Charter if required; and
- giving notice of withdrawal

2 November 2000

Source:

<http://www.sapia.co.za/key-issues/transformation.html>

Appendix 4.

Scorecard for The Broad Based Socio-Economic Empowerment Charter for The South African Mining Industry

STAATSKOERANT, 13 AUGUSTUS 2004

No. 26661 3

GENERAL NOTICE

NOTICE 1639 OF 2004

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

Introduction

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

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

NO.	DESCRIPTION	5 YEAR TARGET		10 YEAR TARGET
1	Human Resource Development			
	Has the company offered every employee the opportunity to be functionally literate and numerate by the year 2005 and are employees being trained?	Yes	No	
	Has the company implemented career paths for HDCA employees including skills development plans?	Yes	No	
	Has the company developed systems through which empowerment groups can be monitored?	Yes	No	
2	Employment Equity			
	Has the company published its employment equity plan and reported on its annual progress in meeting that plan?	Yes	No	
	Has the company established a plan to achieve a target for HDCA participation in management of 40% within five years and is implementing the plan?			
	Has the company identified a talent pool and is it fast tracking it?	Yes	No	
	Has the company established a plan to achieve the target for women participation in mining of 10% within the five years and is implementing the plan?			
3	Migrant Labour			
	Has the company subscribed to government and industry agreements to ensure non-discrimination against foreign migrant labour?	Yes	No	
4	Mine community and rural development			
	Has the company co-operated in the formulation of integrated development plans and is the company co-operating with government in the implementation of these plans for communities where mining takes place and for major labour sending areas? Has there been effort on the side of the company to engage the local mine community and major labour sending area communities? (Companies will be required to cite a pattern of consultation, indicate money expenditures and show a plan).	Yes	No	
5	Housing and Living Conditions			
	For company provided housing has the mine, in consultation with stakeholders established measures for improving the standard of housing, including the upgrading of the hostels, conversion of hostels to family units and promoted home ownership options for mine employees? Companies will be required to indicate what they have done to improve housing and show a plan to progress the issue over time and is implementing the plan?	Yes	No	
	For company provided nutrition has the mine established measures for improving the nutrition of mine employees? Companies will be required to indicate what they have done to improve nutrition and show a plan to progress the issue over time and is implementing the plan?	Yes	No	
6	Procurement			
	Has the mining company given HDCA's preferred supplier status?	Yes	No	
	Has the mining company identified current level of procurement from HDCA companies in terms of capital goods, consumables and services?	Yes	No	
	Has the mining company indicated a commitment to a progression of procurement from HDCA companies over a 3 - 5 year time frame in terms of capital goods, consumables and services and to what extent has the commitment been implemented?	Yes	No	
7	Ownership & Joint Ventures			
	Has the mining company achieved HDCA participation in terms of ownership for equity or attributable units of production of 15 percent in HDCA hands within 5-years and 26 percent in 10-years?			15% 26%
8	Beneficiation			
	Has the mining company identified its current level of beneficiation?	Yes	No	
	Has the mining company established its base line level of beneficiation and indicated the extent that this will have to be grown in order to qualify for an offset?	Yes	No	
9	Reporting			
	Has the company reported on an annual basis its progress towards achieving its commitments in its annual report?	Yes	No	

Notes

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

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

VISION

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

PREAMBLE

Recognising:

- The history of South Africa, which resulted in blacks, mining communities and women largely being excluded from participating in the mainstream of the economy, and the formal mining industry's stated intention to adopt a proactive strategy of change to foster and encourage black economic empowerment (BEE) and transformation at the tiers of ownership, management, skills development, employment equity, procurement and rural development;
- The imperative of redressing historical and social inequalities as stated by the Constitution of the Republic of South Africa, in inter alia section 9 on equality (and unfair discrimination) in the Bill of Rights;
- The policy objective stated in the Mineral and Petroleum Resources Development Act to expand opportunities for historically disadvantaged persons to enter the mining and minerals industry or benefit from the exploitation of the nation's mineral resources;
- The scarcity of relevant skills has been identified as one of the barriers to entry into the mining sector by historically disadvantaged South Africans (HDSA's);

- The slow progress made with employment equity in the mining industry compared to other industries.

Noting that

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

Therefore

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

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

1. SCOPE OF APPLICATION

This Charter applies to the South African mining industry.

2. INTERPRETATION

For the purposes of interpretation, the following terms apply:

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

- Redressing the results of past or present discrimination based on race, gender or other disability of historically disadvantaged persons in the minerals and petroleum industry, related industries and in the value chain of such industries; and
- Transforming such industries so as to assist in, provide for, initiate, facilitate or benefit from the:
 - Ownership participation in existing or future mining, prospecting, exploration and beneficiation operations;
 - Participation in or control of management of such operations;
 - Development of management, scientific, engineering or other skills of HDSA's;
 - Involvement of or participation in the procurement chains of operations;
 - Integrated Socio-economic development for host communities, major labour sending areas and areas that due to unintended consequences of mining are becoming ghost towns by mobilising all stakeholder resources.

The term **Historically Disadvantaged South Africans (HDSA)** refers to any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) came into operation.

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

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

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

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

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

3. OBJECTIVES

The objectives of this charter are to:

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

4. UNDERTAKINGS

All stakeholders undertake to create an enabling environment for the empowerment of HDSA's by subscribing to the following:

4.1 Human Resource Development

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

- Through the standing consultative arrangements they will interface with statutory bodies such as the Mines Qualifications Authority (MQA), in the formulation of comprehensive skills development strategies that include a skills audit;
- By interfacing with the education authorities and providing scholarships to promote mining related educational advancement, especially in the fields of mathematics and science at the school level;
- By undertaking to ensure provision of scholarships and that the number of registered learnerships in the mining industry will rise from the current level of some 1200 learners to not less than 5000 learners by March 2005; and
- Through the MQA shall undertake to provide skills training opportunities to miners during their employment in order to improve their income earning capacity after mine closure.

Government undertakes that:

- In its bi-lateral relations with relevant countries, undertakes to secure training opportunities for HDSA companies' staff, as well as exchange opportunities with mining companies operating outside of South Africa;

- Through the MQA and in collaboration with academic institutions, DME associated institutions, NGO's, and the Gender Commission, shall provide training courses in mining entrepreneur's skills;

Companies undertake:

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

4.2 Employment Equity

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

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

- Ensuring higher levels of inclusiveness and advancement of women. The stakeholders aspire to a baseline of 10 percent of women participation in the mining industry within 5-years; and
- Setting and publishing targets and achievements.

4.3 Migrant Labour

Stakeholders undertake to:

- Ensure non-discrimination against foreign migrant labour.

4.4 Mine Community and Rural Development

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

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

4.5 Housing and Living Conditions

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

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

4.6 Procurement

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

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

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

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

4.7 Ownership and Joint Ventures

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

Active involvement:

- HDSA controlled companies (50 per cent plus 1 vote), which includes management control.

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

Passive involvement:

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

In order to measure progress on the broad transformation front the following indicators are important:

- The currency of measure of transformation and ownership could, *inter alia*, be market share as measured by attributable units of South African production controlled by HDSA's.
- That there would be capacity for offsets which would entail credits / offsets to allow for flexibility.
- The continuing consequences of all previous deals would be included in calculating such credits/offsets in terms of market share as measured by attributable units of production.
- Government will consider special incentives to encourage HDSA companies to hold on to newly acquired equity for a reasonable period.

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

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

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

4.8 Beneficiation

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

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

Mining companies agree to:

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

4.9 Exploration and Prospecting

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

4.10 State Assets

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

4.11 Licensing

To facilitate the processing of licence conversions there will be a scorecard approach to the different facets of promoting broad based socio economic empowerment in the mining industry. This scorecard approach would recognise commitments of the stakeholders at the

levels of ownership, management, employment equity, human resource development, procurement and beneficiation. These commitments have been spelt out in sections 4.1 to 4.9 above.

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

4.12 Financing Mechanism

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

4.13 Regulatory Framework and Industry Agreement

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

4.14 Consultation, Monitoring, Evaluation and Reporting

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

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

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

- Monitoring progress in the implementation of plans;
- Developing new strategies as needs are identified;
- Ongoing government/industry interaction in respect of these objectives;

- Developing strategies for intervention where hurdles are encountered;
- Exchanging experiences, problems and creative solutions;
- Arriving at joint decisions;
- Reviewing this Charter if required.

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Appendix 5.

Section 46 of the Minerals and Petroleum Resources Development Regulations of 2004.

46. Contents of social and labour plan

The contents of a social and labour plan must include the following:

- (a) A preamble which provides background information of the mine in question;
- (b) a human resources development programme which must include-
 - (i) a skills development plan which identifies and reports on -
 - (aa) the number and education levels of the employees which must be completed in the form of Form Q contained in Annexure II; and
 - (bb) the number of vacancies that the mining operation has been unable to fill for a period longer than 12 months despite concerted effort to recruit suitable candidates which must be completed in the form of Form R contained in Annexure II;
 - (ii) a career progression plan and its implementation in line with the skills development plan;
 - (iii) a mentorship plan and its implementation in line with the skills development plan and the needs for the empowerment groups;
 - (iv) an internship and bursary plan and its implementation in line with the skills development plan; and
 - (v) the employment equity statistics which must be completed in the form of Form S contained in Annexure II and the mine's plan to achieve the 10% women participation in mining and 40% historically disadvantaged South Africans (HDSA) participation in management within 5 years from the granting of the right or the conversion of the old order right.
- (c) A local economic development programme which must include-

- (i) the social and economic background of the area in which the mine operates;
 - (ii) the key economic activities of the area in which the mine operates;
 - (ii) the impact that the mine would have in the local and sending communities;
 - (iii) the infrastructure and poverty eradication projects that the mine would support in line with the Integrated Development Plan of the areas in which the mine operates and the major sending areas;
 - (iv) the measures to address the housing and living conditions of the mine employees;
 - (v) the measures to address the nutrition of the mine employees; and
 - (vi) the procurement progression plan and its implementation for HDSA companies in terms of capital goods, services and consumables and the breakdown of the procurement which must be completed in the form of Form T contained in Annexure II.
- (d) processes pertaining to management of downscaling and retrenchment which must include –
- (i) the establishment of the future forum;
 - (ii) mechanisms to save jobs and avoid job losses and a decline in employment;
 - (iii) mechanisms to provide alternative solutions and procedures for creating job security where job losses cannot be avoided; and
 - (iv) mechanisms to ameliorate the social and economic impact on individuals, regions and economies where retrenchment or closure of the mine is certain.
- (e) to provide financially for the implementation of the social and labour plan in terms of the implementation of -
- (i) the human resource development programme;

- (ii) the local economic development programmes; and
 - (iii) the processes to manage downscaling and retrenchment.
- (f) an undertaking by the holder of the mining right to ensure compliance with the social and labour plan and to make it known to the employees.

Source: Department of Mineral Resources

Appendix 6.

FinScope Survey of Small Business summary table

FINMARK TRUST

FINSCOPE

Table 3. Description of businesses in BSM segments

	BSM1	BSM2	BSM3	BSM4
Number of businesses	1,116,447	1,121,429	1,111,089	555,876
Registration	1%	3%	6%	13%
Compliance	None	1% VAT	1% VAT	3% VAT; 1% income tax; 1% return on earnings
Ownership	2% with partners (no contract)	11% with partners (no contract)	11% with partners (no contract)	18% with partners (2% with written contract)
Customers	99% private	3% other small businesses; 1% government	4% other small businesses; 1% larger businesses	5% other small businesses; 1% larger businesses; 1% government
Premises	65% residential; 28% street/market stall	73% residential; 16% street/market stall	77% residential; 16% street/market stall	74% residential; 13% street/market stall
Electricity	30%	58%	67%	69%
Toilet facilities	27% outside	37% outside 8% inside	41% outside 25% inside	38% outside 27% inside
Running water	24% outside 3% inside	42% outside 17% inside	47% outside 34% inside 10% hot	45% outside 44% inside 15% hot
Access to kitchen	2%	22%	23%	31%
Access to storage facilities	1%	1%	8%	22%
Cell phones	27%	46%	61%	65%
Landline			5%	3%
Company car			3%	4%
Security system				
Computers				
Internet/email				
Fax/Photostat facilities				
Credit card machine				

Table 3. Description of businesses in BSM segments

	BSM5	BSM6	BSM7	BSM8
Number of businesses	557,651	562,526	275,872	278,878
Registration	19%	54%	74%	90%
Compliance	6% VAT; 1% income tax; 1% UIF;	13% VAT; 15% income tax; 3% UIF; 4% PAYE; 1% return on earnings	33% VAT; 37% income tax; 18% UIF; 20% PAYE; 6% return on earnings 1% SETA and skills development	64% VAT; 73% income tax; 51% UIF; 56% PAYE; 25% return on earnings 20% SETA and skills development
Ownership	12% with partners (2% with written contract)	16% with partners (4% with written contract)	24% with partners (17% with written contract)	31% with partners (20% with written contract)
Customers	13% other small businesses; 3% larger businesses	15% other small businesses; 4% larger businesses; 3% government	31% other small businesses; 11% larger businesses; 7% government	46% other small businesses; 28% larger businesses; 13% government
Premises	78% residential; 13% street/market stall; 3% business park/factory/ office block/mall	83% residential; 8% street/market stall; 7% business park/factory/ office block/mall	72% residential; 6% street/market stall; 15% business park/factory/ office block/mall	60% residential; 3% street/market stall; 31% business park/factory/ office block/mall
Electricity	79%	90%	91%	96%
Toilet facilities	45% outside 29% inside	53% outside 58% inside	49% outside 70% inside	43% outside 91% inside
Running water	58% outside 52% inside 19% hot	61% outside 70% inside 30% hot	67% outside 81% inside 60% hot	67% outside 96% inside 80% hot
Access to kitchen	32%	41%	61%	77%
Access to storage facilities	16%	28%	50%	65%
Cell phones	76%	87%	92%	82%
Landline	6%	12%	28%	75%
Company car	5%	15%	26%	44%
Security system	4%	10%	45%	68%
Computers		9%	36%	78%
Internet/email		1%	10%	58%
Fax/Photostat facilities		4%	10%	69%
Credit card machine				13%