South African Mining Development Association

Charter Non-Compliancy, Transfer Pricing, Lack of Transformation within the Mining Industry and Achieving the NDP

22 April 2015

Presented to: Portfolio Committee on Trade and Industry
This land, the whole land
Will be healed, must be healed

These brazen cities, the swollen mines
The mineral of our sweat
The teeming ghetto, the dormitory cells
In towns and squalid squatter camps
Where hope smothers in a tyre
These furnaces of human indifference must incinerate
With all the heat of a healing fire

Those were the dark ages of mining
And now the winds of change are blowing
A brighter new future our way-
A future of Global Mining Transformation
A future of the paradigm shift

This land, the whole land
Will be healed, must be healed

- Don Matera
AFRICA’S STRATEGIC MINERALS AND KEY PRODUCERS THAT ARE SUBJECT TO NEO-COLONIALISM (2010)

Mineral Production & Known Resources (‘04) (however, much of Africa is still un-surveyed)

<table>
<thead>
<tr>
<th>Mineral</th>
<th>Production</th>
<th>Rank</th>
<th>Reserves</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>PGMs*</td>
<td>54%</td>
<td>1</td>
<td>60+%</td>
<td>1</td>
</tr>
<tr>
<td>Phosphate</td>
<td>27%</td>
<td>1</td>
<td>66%</td>
<td>1</td>
</tr>
<tr>
<td>Gold</td>
<td>20%</td>
<td>1</td>
<td>42%</td>
<td>1</td>
</tr>
<tr>
<td>Chromium</td>
<td>40%</td>
<td>1</td>
<td>44%</td>
<td>1</td>
</tr>
<tr>
<td>Manganese</td>
<td>28%</td>
<td>2</td>
<td>82%</td>
<td>1</td>
</tr>
<tr>
<td>Vanadium</td>
<td>51%</td>
<td>1</td>
<td>95%</td>
<td>1</td>
</tr>
<tr>
<td>Cobalt</td>
<td>18%</td>
<td>1</td>
<td>55+%</td>
<td>1</td>
</tr>
<tr>
<td>Diamonds</td>
<td>78%</td>
<td>1</td>
<td>88%</td>
<td>1</td>
</tr>
<tr>
<td>Aluminium</td>
<td>4%</td>
<td>7</td>
<td>45%</td>
<td>1</td>
</tr>
</tbody>
</table>

*PGMs: Platinum Group Minerals

Also Ti (20%), U (20%), Fe (17%), Cu (13%), etc.

NEO-COLONIALISM AND ENCUMBERED NET VALUE = FOREIGN OWNERSHIP IN AFRICA’S MINERAL RESOURCES MAP

Investments in Mining had an exploitation culture in South Africa and the rest of Africa—The Resource Curse and Economic Apartheid:

- No black ownership
- Militant labour force fighting exploitative labour practices
- Ghost towns
- Neo-colonialism
- Scramble for Africa from the 19th Century through colonialism and decolonization of Africa through neo-colonialism after the 2nd World War to date.
- No royalty payments to rural communities

Within 21 years of our democracy the political emancipation of South Africans has been achieved but the economic emancipation of the majority of South Africans is a fallacy and not a reality.
From The Resource Curse and Economic Apartheid Model; A Catalyst for Xenophobia, Kuruman, Service Delivery Protest, Marikana, etc.:
Colonialism: Africa. In 1914, Africa was almost entirely controlled by European colonial powers, which had raced one another to acquire territory in the so-called “Scramble for Africa.” This map shows the Belgian, British, French, German, Italian, Portuguese, and Spanish colonies in Africa. Only Ethiopia and Liberia remained independent countries.

Source: http://history.howstuffworks.com/african-history/history-of-africa4.htm
AFRICANGLOBE – Africa has 10 per cent of the world’s known reserves of oil, 40 per cent of its gold, and 80 to 90 per cent of the chromium and the platinum metal group, to list only a few. But a number of commentators still refer to this wealth of natural resources and minerals as “Africa’s resource curse.” They associate the many wars, poverty and untold suffering of ordinary Africans to this abundance. It is true that the abundance of natural resources has been the catalyst for wars and conflict. But should an abundance of natural resources lead to Africa’s decline? The answer must surely be a resounding no.
Economic Exploitation and Economic Colonization = THE RESOURCE CURSE, CONFLICT DIAMONDS, TRANSFER PRIING, XENOPHOBIA

Zuma cancels state visit to focus on govt response to xenophobic attacks

Xolani Mbanjwa @City_Press #Xenophobia
18 April 2015 14:26

CONFLICT DIAMONDS

The illicit trade in diamonds has funded brutal wars and human rights abuses for decades. Despite significant progress, the problem has not gone away. Read more

Source: www.globalwitness.org


Source: http://www.cfr.org/
CHARTER NON COMPLIANCE, TRANSFER PRICING, SERVICE DELIVERY PROTESTS, MARIKANA, KURUMAN, XENOPHOBIA:

‘No road, no school’ protest costs Kuruman pupils a year

Poloko Tau  @City_Press
11 September 2014 16:41
The Resource Curse and Economic Apartheid Model:

Environmental Hazards

Ghost Towns in Kimberly and the Namaqualand
NEO-COLONIALISM, ENCUMBERED NET VALUE AND TRANSFER PRICING THE REAL CAUSE OF THE FOLLOWING:

• Economic inequality
• Unemployment
• Poverty
• Lack of Infrastructure Development
• Lack of Education
• Lack of Beneficiation
• Lack of Industrialisation
• Lack of Health and Hospitals
• Lack of Food Security
• Lack of Basic Human Rights
• Xenophobia
• Service Delivery Protests
“Honourable Members, we are also taking further steps to combat financial leakages which deprive our economy of billions of rand through erosion of the tax base, profit shifting and illicit money flows.”

“Action has to be taken to close tax evasion loopholes such as transfer pricing, and profit shifting strategies by SA corporates. I ask that South Africa continue its support for the recent G20 decisions in this regard and the implementation of actions in support of transparency and sharing of information. South Africa must similarly stand firm in the SADC against tax havens.” - Finance Minister Nhlanhla Nene – 2015 Budget Speech
Tax office pursues BHP Billiton and Rio Tinto over Singapore tax shelter.

- Mining giants BHP Billiton and Rio Tinto are being pursued by the Australian Taxation Office for channeling billions of dollars in profits from iron ore sales through companies that pay almost no tax in Singapore. While BHP Billiton and Rio TInto are Australia's largest taxpayers, The Australian Financial Review has obtained documents that show the two mining companies report $2.6 billion a year in profits in their Singapore marketing hubs where they pay tax rates as low as 2.5 per cent.

- The arrangements save the two companies more than $750 million a year in Australian tax and the ATO regards it as tax avoidance under the transfer pricing rules. The ATO is pursuing multibillion-dollar claims against each company, says a source with direct knowledge of the disputes. The exact amounts of the potential tax bills are unclear and both companies have fought the ATO for years and argue their Singapore operations were not set up to reduce tax.
Former President Thabo Mbeki said that “More than $50 billion (R582 billion) left the continent annually—money that could be used for development”. Source: www.citypress.co.za

“The problem is that private companies or large companies are able to mobilise much better skills with regards to lawyers, accountants, banking people and all that, so they could bring all that expertise to bear in the court cases” – Thabo Mbeki
South Africa is losing roughly R147-billion a year to the illegal movement of money out of the country. (Source: Global Financial Integrity  GFI)

• Out of 151 countries, South Africa loses, on average, the 12th highest amount of money through illicit financial outflows. In 2012 alone, South Africa ranked 9th, losing $29.13-billion, according to (GFI)

• This is according to a report by international monitoring organisation, Global Financial Integrity (GFI), which released a new report on illegal capital flight this week. The report tracks illegal outflows from 2003 to 2012. (source:www.mg.co.za)

• “This form of illegal capital flight, or, illicit financial flows, involves the movement of money out of the country in which it is generated, robbing countries of the economic benefits of money generated” – source (GFI).

• “Companies do this to purposefully hide profits generated or money illegally earned from their record books” – source (GFI)
E-Tolls - a result of Transfer Pricing:
Transfer Pricing creates Erosion of Capital and lack of Funding
for Road Infrastructure:

• Abolish Transfer Pricing and address SA National Roads Agency Limited's (Sanral) R150 billion
  roads infrastructure and maintenance backlog.

• The Sanral's debt of R41bn could be put in jeopardy by motorists' non-payment for e-tolls,
  according to spokesperson Vusi Mona. (Dec 2013).

SOLUTION – Abolish Tax Erosion / Abolish Transfer Pricing and Create sustainable Infrastructure
Load Shedding a result of Transfer Pricing
Transfer Pricing = Erosion of Capital which should pay for Electricity Generation:

Eskom will have to raise "additional debt in the region of R50bn, over and above its original plan of R200bn".

"Eskom is facing significant challenges that threaten its sustainability," according to National Treasury.

SOLUTION – FIX ESKOM AND COLLECT THE REQUIRED FUNDS BY ABOLISHING TRANSFER PRICING
Transfer Pricing = Cripples the ability to address Infrastructure and Transport Needs:

SAA, requires funding of R50 billion to stay afloat, according Public Enterprises Minister Lynne Brown.

“We are looking at guarantees for funding for SAA, They have to meet conditions of the open market.” The funds would come from private investors as loans or bonds and be backed by the Treasury - Public Enterprises Minister Lynne Brown

- SOLUTION - Minister Lynne Brown Please Advocate for the of Abolishment of Transfer Pricing to raise the funds required for SAA.

- Avoid raising funds in a negative credit rating economic environment
Transfer Pricing = Cripples the ability to build Educational Institutions:

“Acting CEO at NSFAS Nathan Johnstone, in 2013 said the number of students they are able to fund is significantly less than the number of students who need financial aid”.

Higher Education Minister Blade Nzimande told Parliament in 2012 that R147-billion could accommodate all university students at all universities in the country, (source:www.mg.co.za)

SOLUTION – Ministers of Education Please Advocate for the of Abolishment Transfer Pricing to raise the funds required for Sustainable Education
Transfer Pricing = Cripples the ability to build Hospitals and Deliver Health Care:

The bulk of health-sector funding comes from the South Africa's National Treasury. The health budget for 2012/13 was R121-billion, which was aimed at improving hospitals and strengthening public health ahead of the National Health Insurance scheme. (Source: http://www.southafrica.info/about/health/health.htm#.VL5HOkeUeSo#ixzz3PMayrMa3)

South Africa has a Shortage of doctors, medical staff, clinics and hospitals.

SOLUTION - Minister Dr. Aaron Motsoaledi Please Advocate for the of Abolishment Transfer Pricing to raise the funds required for Health.
The Role of Audit & Tax Firms and Finance & Audit Committees of Boards in Transfer Pricing:

• Do Audit Firms pay attention to Transfer Pricing when issuing clean audits?

• Audit Companies should ensure Transfer Pricing does not happen.

• Audit Companies please ensure that Board Members, (especially the Finance & Audit Committees) adhere to non Transfer Pricing Rules.
The Role of Finance Institutions and Banks in Transfer Pricing:

- Do Finance Institutions and Banks pay attention to Transfer Pricing when managing funds and supplying credit?

- Finance Institutions and Banks should not do financial transactions with organizations that are involved in Transfer Pricing.
The Role of Commercial Law Firms in Transfer Pricing:

- Do Commercial Law Firms pay attention to Transfer Pricing when structuring deals and drafting contracts?

- Commercial Law Firms when advising clients should insist on structuring legal agreements that adhere to non Transfer Pricing Rules.
What Is Transfer Pricing?

• The term ‘transfer pricing’ is used to describe arrangements involving the transfer of goods or services, at an artificial price, (usually lower) in order to transfer income from one business to an associated business in a different tax jurisdiction which is often lower.

• Some producer companies sell the companies commodities to its marketing divisions at lower than market related prices.

• This results in the exportation of profits to the tax haven off shore accounts and the declaration of low profits and the payment of low tax in the country where the commodity is being produced and exported from. In this case a loss to South Africa.

• As Transfer Pricing regulating are tightened in South Africa, more sophisticated forms are developed, such as abuse of Advanced Pricing Agreements.
Some Ways To Transfer Price

• Under reporting of commodity prices, in favour of contract pricing or recommended pricing;
• Non-reporting of full range of products sold;
• Inflated expenditure used to reduce profits locally;
• Thin-capitalisation;
• Transfer between two South African based companies which are connected but the transfer is towards the company carrying an assessed loss which is used to reduce prices; and
• Exchange rate misreporting
Impact on the Mining Economy and The NDP

- Outflows exceed local spend significantly;
- Pleading poverty;
- Projects committed to are underfunded because of a perceived loss of profitability;
- Commitments are scaled back and delayed;
- BBBEEE partners to mining companies are robbed of profits.
- Dividends which would go towards paying or re-paying loans and funding projects are not paid leading to cancelled BBBEEE deals.
- Transfer pricing have detrimental effects on the economy because the lack of profits results in lower tax or no tax to treasury.
- This results in the impairment of the direct and indirect contribution of the mining industry to the economy because of transfer pricing, eg:
- The consequences of this is Marikana, Service Delivery Protests, Xenophobia and Economic Instability
The impairment of the direct and indirect contribution of the mining industry to the economy because of Transfer Pricing:

The Mining Sector has a Direct and Indirect contribution to the whole economy as demonstrated by a few of the many sectors of the economy below:

- 17% of GDP (direct and indirect);
- 38% of merchandise exports (primary and beneficiated mineral exports)
- 19% of private sector investment
- 11.9% of total investment in the economy
- 50% of volume of Transnet’s rail and ports
- 16% of formal sector employment (direct and indirect)
- 94% of electricity generation via coal power plants
- 40% of electricity demand
- 37% of country’s liquid fuels via coal
- Accounts for R78-billion spent in wages and salaries.

NB - The above figures of the direct and indirect mining contribution to the South African Economy are artificial and misleading because the genuine figures have been eroded through transfer pricing.

- The whole economy is therefore denied the opportunity of sustainable growth.
Service Delivery Protests

- Service Delivery Protests Occur In Mining Producing Areas eg: Kuruman, The North West, Mpumalanga, Gauteng and Limpopo.
- Service Delivery Protests is a direct consequence of the following:
  - Lack of tax payment by the mining houses to the national fiscus through transfer pricing.
  - Lack of Government Funding for the following:
    - Rural Renewal Projects;
    - Infrastructure development;
    - Education
    - Health
    - Housing
    - Food Security
    - Youth Empowerment Initiatives
    - Job Creation
- Community Uprisings and Xenophobia will continue for as long as Transfer Pricing Continues.
- Service Delivery and xenophobia is a direct consequence of Non-compliancy to the BBBEE codes of good practice and the Mining Charter
- Government and Mining Stakeholders should collectively address the Mining Charter Non-Compliance and Transfer Pricing
100. (2) (a) To ensure the attainment of Government’s objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework, targets and time-table for effecting the entry of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources.
### SCORECARD FOR THE BROAD-BASED SOCIO-ECONOMIC EMPOWERMENT CHARTER FOR THE SOUTH AFRICAN MINING INDUSTRY

<table>
<thead>
<tr>
<th>ELEMENT</th>
<th>DESCRIPTION</th>
<th>MEASURE</th>
<th>COMPLIANCE TARGET BY 2014</th>
<th>PROGRESS ACHIEVED BY 2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>Weighting</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Reporting</td>
<td>Has the company reported the level of compliance with the Charter for the Calendar year</td>
<td>Documentary proof of receipt from the department</td>
<td>Annually</td>
<td>Y/N</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Ownership</td>
<td>Minimum target for effective HDSA ownership</td>
<td>Meaningful economic participation</td>
<td>26%</td>
<td>Y/N</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Full shareholder rights</td>
<td>26%</td>
<td>Y/N</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3 Housing and living conditions</td>
<td>Conversion and upgrading of hostels to attain the occupancy rate of one person per room</td>
<td>Percentage reduction of occupancy rate towards 2014 target</td>
<td>Occupancy rate of one person per room</td>
<td>Y/N</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Conversion and upgrading of hostels into family units</td>
<td>Percentage conversion of hostels into family units</td>
<td>Family units established</td>
<td>Y/N</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4 Procurement &amp; Enterprise</td>
<td>Procurement spent from BEE entity</td>
<td>Capital goods</td>
<td>40%</td>
<td>5%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development</td>
<td></td>
<td>Services</td>
<td>70%</td>
<td>5%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Consumable goods</td>
<td>50%</td>
<td>2%</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>5 Employment Equity</td>
<td>Multinational suppliers contribution to the social fund</td>
<td>Annual spend on procurement from multinational suppliers</td>
<td>0.5% of procurement value</td>
<td>3%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Diversification of the workplace to reflect the country's demographics to attain competitiveness</td>
<td>Top Management (Board) level</td>
<td>40%</td>
<td>3%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Senior Management (Exco)</td>
<td>40%</td>
<td>4%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Middle Management</td>
<td>40%</td>
<td>3%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Junior Management</td>
<td>40%</td>
<td>3%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Core Skills</td>
<td>40%</td>
<td>1%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6 Human Resource Development</td>
<td>Development of requisite skills, incl. support for South African based 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</td>
<td>HRD expenditure as percentage of total annual payroll (excl. mandatory skills development levy)</td>
<td>5%</td>
<td>25%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
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<th>PROGRESS ACHIEVED BY 2014</th>
<th>Weighting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mine community development</td>
<td>Conduct ethnographic community consultative and collaborative processes to delineate community needs analysis</td>
<td>Implement approved community projects</td>
<td>Up-to-date project implementation</td>
<td>Implementation of projects will serve to enhance relationships amongst stakeholders leading to communities owing patronage to projects.</td>
<td>15%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sustainable development &amp; growth</td>
<td>Improvement of the industry’s environmental management</td>
<td>Implementation of approved EMPs.</td>
<td>100%</td>
<td>Annual progress achieved against approved EMPs.</td>
<td>12%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Improvement of the industry’s mine health and safety performance</td>
<td>Implementation of the tripartite action plan on health and safety</td>
<td>100%</td>
<td>Annual progress achieved against commitments in the tripartite action plan on health and safety.</td>
<td>12%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Utilisation of South African based research facilities for analysis of samples across the mining value chain</td>
<td>Percentage of samples in South African facilities</td>
<td>100%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>5%</td>
</tr>
<tr>
<td>Beneficiation</td>
<td>Contribution of a mining company towards beneficiation (this measure is effective from 2012)</td>
<td>Additional production volume contributory to local value addition beyond the base-line</td>
<td>Section 26 of the MPRDA (percentage above baseline)</td>
<td>The beneficiation strategy and its modalities of implementation outline the beneficiation requirements per commodity extracted in South Africa.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL SCORE**

Y/N applies to pillars that are ring- fenced.

**Legend**

- 0-25% (Gross non-compliance)
- 25-50% (Non-compliance)
- 50-75% (Marginal to acceptable performance)
- 75-100% (Excellent performance)
Ownership Element of the Mining Charter

Ownership - 26% equity participation by May 2014

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

  – The current Wording in the Mining Charter is:
    • Achieve a minimum target of 26 percent ownership to enable meaningful economic participation of HDSA by 2014:

  – For HDSA ownership without debt the word *unencumbered net value* should have been included eg:
    • Achieve a minimum target of 26 percent *(unencumbered net value)* ownership to enable meaningful economic participation of HDSA by 2014:

  – 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.
The Once Empowered Always Empowered: Ownership Element of the Mining Charter Should not be allowed through the following clause:

- The continuing consequences of all previous deals concluded prior to the promulgation of the Mineral and Petroleum Resources Development Act, 28 of 2002 prior to 2002 would be included in calculating such credits/offsets in terms of market share as measured by attributable units of production.

**Eg: No Reflection of BEE Partners**

<table>
<thead>
<tr>
<th>Number</th>
<th>Mine</th>
<th>Anglo Ownership</th>
<th>HDASA Partners in the Mine</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Goedehoop colliery</td>
<td>100%</td>
<td>No Reflection of HDASA Partners? - No Mining Charter Credits</td>
</tr>
<tr>
<td>2</td>
<td>Greenside colliery</td>
<td>100%</td>
<td>No Reflection of HDASA Partners? - No Mining Charter Credits</td>
</tr>
<tr>
<td>3</td>
<td>Kleinkopje colliery</td>
<td>100%</td>
<td>No Reflection of HDASA Partners? - No Mining Charter Credits</td>
</tr>
<tr>
<td>4</td>
<td>Isibonelo colliery</td>
<td>100%</td>
<td>No Reflection of HDASA Partners? - No Mining Charter Credits</td>
</tr>
<tr>
<td>5</td>
<td>Landau colliery</td>
<td>100%</td>
<td>No Reflection of HDASA Partners? - No Mining Charter Credits</td>
</tr>
<tr>
<td>6</td>
<td>New Denmark colliery</td>
<td>100%</td>
<td>No Reflection of HDASA Partners? - No Mining Charter Credits</td>
</tr>
<tr>
<td>7</td>
<td>New Vaal colliery</td>
<td>100%</td>
<td>No Reflection of HDASA Partners? - No Mining Charter Credits</td>
</tr>
<tr>
<td>8</td>
<td>Mafube colliery</td>
<td>50%</td>
<td>50 % (Exxaro) – HDASA Credits only with Unencumbered Net Value</td>
</tr>
<tr>
<td>9</td>
<td>Zibulo colliery</td>
<td>73%</td>
<td>27 % (Anglo Inyosi Coal) – HDASA Credits only with Unencumbered Net Value</td>
</tr>
<tr>
<td>10</td>
<td>Kriel colliery</td>
<td>73%</td>
<td>27 % (Anglo Inyosi Coal) – HDASA Credits only with Unencumbered Net Value</td>
</tr>
</tbody>
</table>
Transfer Pricing Results in non compliance to the Ownership Requirements of the Mining Charter - 26% equity participation by 1st May 2014 has not been met by the majority producers.

- The charter requires a minimum effective participation of 26% by HDSA by the 1st of May 2014
- The current Ownership Structure is a neo-colonialist ownership model that perpetuates ownership of the country’s resources and mines by foreign investor monopoly.
- 26% Broad Based Black Economic Empowerment Ownership through Unencumbered Net Value in the mining industry by 2014 has not been reached by the majority of the mining companies.
- Many of The Broad Based Black Economic Empowerment investors that have not yet realized 26% unencumbered net value by the 1 May 2014 as prescribed by the Mining Charter through section 100 (2) a of the MPRDA are the following:
  - Employee Ownership Schemes (ESOPs)
  - Union Investment Companies
  - Community Trusts (Labour Migrants and Labour Sending Areas)
  - Broad Based Business Trusts
  - BEE Technical Producers
  - Women In Mining
  - Youth In Mining
  - People living with Disabilities
- Ownership is still unrealised in the majority of Broad Based Black Economic Empowerment transactions because of lack profit that resulted in lack of dividends and non payment of equity for ownership of the mines due to transfer pricing
Transfer Pricing Results in non compliance to the Ownership Requirements of the Mining Charter - 26% equity participation by 1st May 2014 has not been met by the majority producers.

• According to the research of the JSE Top 49 Mining Companies conducted by SAMDA In 2014
• The market capitalisation of the Top 49 JSE-Resources companies is R2,574 trillion (100% of the resources sector’s value on the JSE main board).
• The charter requires a minimum effective participation of 26% by HDSA in each of the 49 listed companies
• If all the Top 49 Listed Mining Companies had 26% HDSA ownership of R2,574 trillion the value would have been R669 billion HDSA participation in 2014.
• To date the HDSA ownership is R63.9 billion which is equivalent to 2.49%
• The majority of black producers do not own mines because the shareholding has not been paid up due to Transfer Pricing.
• 1st of May 2014 Ownership Requirements Charter compliancy deadline has not been adhered to and the mining industry continues to be foreign owned, hence sabotaging the rapid economic transformation and the NDP.
• There is artificial ownership and not unencumbered net value that is symbolic of ownership without debt.
The Majority Of The JSE Top 49 Mining Companies Has A Charter Non-Compliant Ownership Profile (2013/2014)

<table>
<thead>
<tr>
<th>Number</th>
<th>Name</th>
<th>Market Cap (Rm)</th>
<th>HDSA Interest %</th>
<th>Gross HDSA Value (Rm)</th>
<th>Yes / No</th>
<th>Value (Rm)</th>
<th>Net Value as % of Market Cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>African Rainbow Minerals Ltd.</td>
<td>47 310</td>
<td>55.00%</td>
<td>26 021</td>
<td>Yes</td>
<td>26 021</td>
<td>1.01%</td>
</tr>
<tr>
<td>2</td>
<td>Assore Ltd.</td>
<td>55 642</td>
<td>26.10%</td>
<td>14 523</td>
<td>Yes</td>
<td>14 523</td>
<td>0.56%</td>
</tr>
<tr>
<td>3</td>
<td>Impala Platinum Holdings Ltd.</td>
<td>72 983</td>
<td>14.60%</td>
<td>10 656</td>
<td>Yes</td>
<td>10 656</td>
<td>0.41%</td>
</tr>
<tr>
<td>4</td>
<td>Royal Bafokeng Platinum Ltd.</td>
<td>10 380</td>
<td>57.13%</td>
<td>5 930</td>
<td>Yes</td>
<td>5 930</td>
<td>0.23%</td>
</tr>
<tr>
<td>5</td>
<td>Atlatsa Resources Corporation</td>
<td>2 601</td>
<td>55.00%</td>
<td>1 431</td>
<td>Yes</td>
<td>1 431</td>
<td>0.05%</td>
</tr>
<tr>
<td>6</td>
<td>Pan African Resources PLC</td>
<td>3 880</td>
<td>26.00%</td>
<td>1 269</td>
<td>Yes</td>
<td>1 269</td>
<td>0.05%</td>
</tr>
<tr>
<td>7</td>
<td>Harmony Gold Mining Company Ltd.</td>
<td>14 191</td>
<td>14.74%</td>
<td>2 092</td>
<td>Yes</td>
<td>2 092</td>
<td>0.08%</td>
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<tr>
<td>8</td>
<td>Merafe Resources Ltd.</td>
<td>2 469</td>
<td>29.00%</td>
<td>716</td>
<td>Yes</td>
<td>716</td>
<td>0.03%</td>
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<tr>
<td>9</td>
<td>Gold Fields Ltd.</td>
<td>30 243</td>
<td>2.30%</td>
<td>696</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
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<tr>
<td>10</td>
<td>Sibanye Gold Ltd.</td>
<td>11 644</td>
<td>2.30%</td>
<td>268</td>
<td>Yes</td>
<td>268</td>
<td>0.01%</td>
</tr>
<tr>
<td>11</td>
<td>Wescoal Holdings Ltd.</td>
<td>422</td>
<td>34.40%</td>
<td>145</td>
<td>Yes</td>
<td>145</td>
<td>0.01%</td>
</tr>
<tr>
<td>12</td>
<td>Village Main Reef Ltd.</td>
<td>406</td>
<td>23.00%</td>
<td>93</td>
<td>Yes</td>
<td>93</td>
<td>0.00%</td>
</tr>
<tr>
<td>13</td>
<td>Firestone Energy Ltd.</td>
<td>248</td>
<td>25.70%</td>
<td>64</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>14</td>
<td>Infrasors Holdings Ltd.</td>
<td>204</td>
<td>28.40%</td>
<td>58</td>
<td>Yes</td>
<td>58</td>
<td>0.00%</td>
</tr>
<tr>
<td>15</td>
<td>Witwatersrand Consolidated Gold Resources Ltd.</td>
<td>366</td>
<td>9.86%</td>
<td>36</td>
<td>Yes</td>
<td>36</td>
<td>0.00%</td>
</tr>
<tr>
<td>16</td>
<td>Exxaro Resources Ltd.</td>
<td>53 667</td>
<td>34.40%</td>
<td>18 461</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>17</td>
<td>Northam Platinum Ltd.</td>
<td>16 559</td>
<td>26.60%</td>
<td>4 405</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>18</td>
<td>Palabora Mining Company Ltd.</td>
<td>5 541</td>
<td>26.00%</td>
<td>1 441</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>19</td>
<td>AngloGold Ashanti Ltd.</td>
<td>65 534</td>
<td>1.90%</td>
<td>1 245</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>20</td>
<td>Anglo American Platinum Ltd.</td>
<td>119 391</td>
<td>1.00%</td>
<td>1 194</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>21</td>
<td>Aquarius Platinum Ltd.</td>
<td>3 428</td>
<td>15.20%</td>
<td>521</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>22</td>
<td>Petmin Ltd.</td>
<td>1 137</td>
<td>24.00%</td>
<td>273</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>23</td>
<td>Coal of Africa Ltd.</td>
<td>1 153</td>
<td>10.58%</td>
<td>122</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>24</td>
<td>Trans Hex Group Ltd.</td>
<td>444</td>
<td>20.40%</td>
<td>91</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>25</td>
<td>Wesizwe Platinum Ltd.</td>
<td>1 270</td>
<td>6.00%</td>
<td>33</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>26</td>
<td>Sentula Mining Ltd.</td>
<td>364</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>27</td>
<td>Buildmax Ltd.</td>
<td>453</td>
<td>6.75%</td>
<td>31</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>28</td>
<td>Glencore Xstrata plc</td>
<td>783 691</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>29</td>
<td>BHP Billiton Plc</td>
<td>700 947</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>30</td>
<td>Anglo American plc</td>
<td>364 141</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>31</td>
<td>Kumba Iron Ore Ltd.</td>
<td>144 501</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>32</td>
<td>Lonmin plc</td>
<td>32 084</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>33</td>
<td>ArcelorMittal South Africa Ltd.</td>
<td>17 005</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
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<tr>
<td>34</td>
<td>ORDGOLD Ltd.</td>
<td>1 604</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>35</td>
<td>Evraz Highveld Steel and Vanadium Ltd.</td>
<td>1 676</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>36</td>
<td>Resource Generation Ltd.</td>
<td>1 279</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
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<tr>
<td>37</td>
<td>Eastern Platinum Ltd.</td>
<td>826</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
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<tr>
<td>38</td>
<td>Keaton Energy Holdings Ltd.</td>
<td>540</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>39</td>
<td>Tawana Resources NL</td>
<td>429</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
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<tr>
<td>40</td>
<td>Goliath Gold Mining Ltd.</td>
<td>317</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>41</td>
<td>South African Coal Mining Holdings Ltd.</td>
<td>267</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
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<tr>
<td>42</td>
<td>The Waterberg Coal Company Ltd.</td>
<td>275</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>43</td>
<td>Rockwell Diamonds Inc.</td>
<td>193</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>44</td>
<td>Ferrum Crescent Ltd.</td>
<td>167</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>45</td>
<td>Randgold &amp; Exploration Co Ltd.</td>
<td>154</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>46</td>
<td>Forbes &amp; Manhattan Coal Corp</td>
<td>126</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>47</td>
<td>Miranda Mineral Holdings Ltd.</td>
<td>114</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>48</td>
<td>Bauba Platinum Ltd.</td>
<td>102</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td>49</td>
<td>Sable Platinum Ltd.</td>
<td>100</td>
<td>0.00%</td>
<td>0</td>
<td>No</td>
<td>0</td>
<td>0.00%</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>2 574 007</td>
<td>3.57%</td>
<td>91 888</td>
<td>No</td>
<td>63 995</td>
<td>2.49%</td>
</tr>
</tbody>
</table>
Procurement and Enterprise Development

- By adhering to procurement and enterprise development requirements of the Charter by 2014, will result in the contribution towards the achievement of the NDP and,
- The creation of sustainable businesses through the mining economy by 2030.

- The DMR should have a policy that will put all mining producers under the obligation of securing procurement opportunities for mine workers that are being retrenched including those workers who have been retrenched.

- Mining ghost towns in the Free State, Northern Cape, etc exist because the lack of procurement and beneficiation in those towns during the production of minerals prevented the creation of small and medium enterprises as well as secondary industries conducive of manufacturing strategic minerals to the local and export market.

- Through Procurement, skills enhancement and job creation for retrenched workers is guaranteed and a diversified economy is cultivated and ghost towns minimized.

- It is unfortunate that many of the mining companies procure goods manufactured off shore, eg. China, etc or bigger cities in South Africa instead of promoting goods manufactured in South Africa or in mining towns to contribute towards Local Economic Development.

- The review and monitoring of Government’s protection clauses against imported goods must continue and be enforced to ensure that locally manufactured goods enjoy priority and subsidies are implemented to maintain competitive pricing.

- By so doing job loss and retrenchments can be limited and economic sustainability will continue to prevail.
Example of mining data:

Top 2000 suppliers to mines: 2010

Northern Cape Mines
Definitions

1. BE - Black Empowered company
2. BI - Black Enterprise
3. BO - Black Owned (51%)
4. BWO - Black Women Owned
5. ES – Exempt Suppliers Excluded – Companies without BBBEE certificates
6. NB Status Not Verified – BEE Status not verified
7. WF – White Females
8. Expired – Companies with Expired BEE Certificates
9. Level – BEE Recognition Level
26. (1) The Minister may initiate or prescribe incentives to promote the beneficiation of minerals in the Republic.

(2) If the Minister, acting on advice of the Board and after consultation with the Minister of Trade and Industry, finds that a particular mineral can be beneficiated economically in the Republic, the Minister may promote such beneficiation subject to such terms and conditions as the Minister may determine.

(3) Any person who intends to beneficiate any mineral mined in the Republic outside the Republic may only do so after written notice and in consultation with the Minister.
BENEFICIATION A TOOL FOR JOB CREATION AND SKILLS ENHANCEMENT AND ACHIEVING THE NDP

• Mining companies must facilitate local beneficiation of mineral resources of mineral commodities by adhering to the provision of section 26 of the MPRDA and the mineral beneficiation strategy. *(Mining Charter, Pg 2)*

• It is unfortunate that a majority of the companies import finished (manufactured) goods from offshore instead of manufacturing goods locally hence causing severe job loses and denying the country skills enhancement opportunities.

• Job creation for retrenched workers through beneficiation promotes skills transfer and development.

• By complying to the mining charter through beneficiating minerals, small and medium enterprises and manufacturing industries will be promoted and thus stimulating job creation and diversified economic development through industrialization.
EMPLOYMENT EQUITY & HUMAN RESOURCES DEVELOPMENT – TOOLS TOWARDS ACHIEVING THE NDP

• The Amended Charter has targets for HDSA representation at each of the following levels: executive management (board); senior management (EXCO); core and critical skills; middle management; and junior management. The target for 2014 is:
  – 40% by 1\textsuperscript{st} March 2014.

• The mining industry is behind in producing active HDSA executives compared to Government Departments and State Owned Companies, eg: Chief Executive Officers, Chief Operating Officers, Managing Directors, Finance Directors, etc.

• Many mining companies in the JSE Mining Index have failed to produce HDSA candidates in employment equity and human resources development in executive management (board); senior management (EXCO).

• The majority of the few Candidates that are being employed are from other African countries therefore greater emphasis should be on indigenisation of employment and human resources development.

• SAMDA supports the African Renaissance and is not against employing migrant labour from the rest of Africa, however it should not be at the detriment of employment equity and human resources development in South Africa.
MINE COMMUNITY DEVELOPMENT through Social and Labour Plans

• Transfer Pricing leads to the lack of effective investment in community development through Social and Labour Plans as well as the lack of charter compliance have contributed to community unrest through service delivery protests and labour unrest especially in the mining towns and villages. Eg: Bekkersdal, Marikana,, etc.

• The majority of the mines are developed in underdeveloped rural areas where communities continue to be poor while their mineral wealth is being explored, exploited and exported.

• If Charter compliancy was being adhered to service delivery unrest and labour unrest would have been better managed.

• Communities and workers continue to demand that the mineral wealth should benefit all South Africans and resist exploitation through the mining industry’s transfer pricing and non charter compliancy.
BREACH OF HOUSING AND LIVING CONDITIONS THROUGH TRANSFER PRICING AND NON CHARTER COMPLIANCE

The Mining Charter states that the following requirements had to be met by 2014:
- To attain the occupancy rate of one person per room by 2014;
- To upgrade or convert hostels into family units by 2014;
- To promote home ownership.

• It is unacceptable that Hostels still exist in 20 years of our democracy despite the housing and living conditions standard requirements of the Mining Charter and Section 100 (1) of the MPRDA.

• Mining towns and villages are currently overburdened by informal settlements instead of decent housing and living units.

• Informal settlements continue to exist despite the fact the government has introduced housing subsidies that the mining companies could have used to assist in creating better housing and living conditions and opportunities for mine workers.

• Transfer pricing has resulted in lack of profit for the following:
  – Adequate housing development
  – Low living out allowance thus resulting in workers staying in informal settlements.
  – Low salaries and wages thus resulting in inhabitable housing and living conditions
BREACH OF SUSTAINABLE DEVELOPMENT THROUGH TRANSFER PRICING AND CHARTER NON COMPLIANCE

The Mining charter requires the mining industry to implement the following:

• Environmental Management Plan
• Rehabilitation
• Waste Removal and Storage
• Ghost towns exist in various mining towns because the above requirements have not been adhered to.

• Improve Health and Safety Performance through:
  – Implementing management systems focused on continuous improvement of all aspects of operations that have a significant impact on the health and safety of employees, contractors and communities where mining takes place;
  – Providing all employees with health and safety training and require employees of contractors to have undergone such training;
  – Implement regular health surveillance and risk-based monitoring of employees.
**ACHIEVING CHARTER COMPLAINCY AND THE NDP THROUGH STRATEGIC MINERALS**

The State has adopted a Strategic Minerals Investment Policy in the following Minerals:

<table>
<thead>
<tr>
<th>Rank</th>
<th>Commodity</th>
<th>Needs of the Country and the Value Chain</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Coal</td>
<td>Energy supply risk</td>
</tr>
<tr>
<td>2</td>
<td>Gold</td>
<td>Job creation potential-jewellery beneficiation</td>
</tr>
<tr>
<td>3</td>
<td>Iron Ore</td>
<td>Infrastructure and job creation prerogative</td>
</tr>
<tr>
<td>4</td>
<td>Manganese</td>
<td>Infrastructure and job creation prerogative</td>
</tr>
<tr>
<td>5</td>
<td>Diamonds</td>
<td>Job creation potential-jewellery beneficiation</td>
</tr>
<tr>
<td>6</td>
<td>PGM</td>
<td>SA’s international dominance; job creation—energy supply</td>
</tr>
<tr>
<td>7</td>
<td>Chrome</td>
<td>SA’s international dominance</td>
</tr>
<tr>
<td>8</td>
<td>Vanadium</td>
<td>SA’s international dominance</td>
</tr>
<tr>
<td>9</td>
<td>Titanium</td>
<td>High technology industries</td>
</tr>
<tr>
<td>10</td>
<td>Nickel</td>
<td>Niche steel products</td>
</tr>
<tr>
<td>11</td>
<td>Uranium</td>
<td>Clean Energy</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Phosphate</td>
<td>food security and fertilizer supply</td>
</tr>
<tr>
<td>13</td>
<td>Limestone</td>
<td>Required for cement manufacture and construction projects</td>
</tr>
<tr>
<td>14</td>
<td>Shale Gas</td>
<td>Energy supply risk and Job Creation through industrialization</td>
</tr>
<tr>
<td>15</td>
<td>Oil (Petroleum)</td>
<td>Energy supply risk and Job Creation through industrialization</td>
</tr>
</tbody>
</table>
BENEFICIATION ENGINE FOR ECONOMIC GROWTH IN THE PARADIGM SHIFT

FOOD SECURITY THROUGH ROBUST AGRICULTURE

Phosphate

Limestone

INFRASTRUCTURE DEVELOPMENT
STEEL VALUE CHAIN (IRON ORE, MANGANESE, NICKEL, VANADIUM & CHROME)
ENERGY COMMODITIES (COAL, URANIUM AND THORIUM)
JOB CREATION AND ECONOMIC GROWTH THROUGH BENEFICIATION OF GOLD, DIAMONDS, COPPER AND PHOSPHATE
WHAT IS A FUEL CELL

- A fuel cell is an electrochemical device that produces electricity silently and without combustion.
- A fuel cell consists of two electrodes sandwiched around an electrolyte.
- Oxygen passes over one electrode and hydrogen over the other, generating electricity, water, and heat.
The Section 12 I Tax Incentive is designed to support Greenfield investments (i.e. new industrial projects that utilise only new and unused manufacturing assets), as well as Brownfield investments (i.e. expansions or upgrades of existing industrial projects). The new incentive offers support for both capital investment and training.

The incentive offers:

• R900 million in the case of any Greenfield project with a preferred status;
• R550 million in the case of any other Greenfield project;
• R550 million in the case of any Brownfield project with a preferred status;
• R350 million in the case of any other Brownfield project;
• An additional training allowance of R36 000 per employee may be deducted from taxable income; and
• A maximum total additional training allowance per project, amounting to R20 million, in the case of a qualifying project, and R30 million in the case of a preferred project.
**SPECIAL ECONOMIC ZONES A CATALYST FOR CHARTER COMPLIANCE AND ACHIEVING THE NDP**

Special Economic Zone (SEZ) programme

• A geographical region that has economic and other laws that are more free-market-oriented than a country's typical or national laws. "Nationwide" laws may be suspended inside a special economic zone.

• In 2013, the Minister of Finance, Pravin Gordhan announced, what is an unprecedented move to bolster support for government’s Special Economic Zone (SEZ) programme.

• Investors in such zones are expected to qualify for a 15% corporate tax rate, and in addition, a further tax deduction for companies employing workers earning less than R60,000 per year.

• Through Special Economic Zones Mining Stakeholders are incentivized to adhere to the following:
  – The implementation of charter compliancy requirements
  – Abolishment of ghost towns
  – Creation of a sustainable mining economy
  – Rapid economic transformation
  – Achievement of the National Development Plan
Recommendation

• We commend the President for not signing the MPRDA amendment bill and by so doing allowing the mining stakeholders to further contribute to the creation of a bill that meaningfully address all stakeholder’s interests and expectations.

• **NB:** The recent proposed court case is unnecessary because the unsigned Bill by the President allows mining stakeholders to address the clauses of the Bill that are of concern. Eg:
  – The current Wording in the Mining Charter is:
    • Achieve a minimum target of 26 percent ownership to enable meaningful economic participation of HDSA by 2014:
  – For HDSA ownership without debt the word *unencumbered net value* should have been included eg:
    • Achieve a minimum target of 26 percent *(unencumbered net value)* ownership to enable meaningful economic participation of HDSA by 2014:
  – The Once Empowered Always Empowered: Ownership Element of the Mining Charter **Should not be allowed through the following clause:**
    • The continuing consequences of all previous deals concluded prior to the promulgation of the Mineral and Petroleum Resources Development Act, 28 of 2002 prior to 2002 would be included in calculating such credits/offsets in terms of market share as measured by attributable units of production.
Recommendation

TRANSFER PRICING:

• Effective legislation should be implemented to abolish transfer pricing and charter non compliance and resistance to the BBBEE Codes of good practice and hence addressing Resource Curse, Service Delivery Protests and Xenophobia.

• The extent, type and impact of commodity price manipulation in the mining sector and the economy as a whole must be investigated and addressed by the Government of South Africa to ensure that revenue that is destined for South African Stakeholders is not eroded out of the country.

• The extent, type and impact of commodity price manipulation of raw materials to be beneficiated by manufactures of South African Minerals must be investigated by the government of South Africa through section 26 (3) of the MPRDA, to ensure that the illicit outflow of capital and incorrect reflection of income from raw materials sold is prevented and hence curbing transfer pricing.

• The role of local and foreign marketing agents and traders and their impact on the mining sector must be investigated to avoid transfer pricing and legislation should be implemented to abolish transfer pricing.

• The role and benefits of companies with primary listing off-shore as well as non listed foreign companies must be investigated and effective legislation must be implemented to avoid transfer pricing.

• We trust that the Davis Tax Commission established by National Treasury will address the illicit outflow of capital through tax erosion and transfer pricing.

MINING CHARTER - 1st May 2014 CHARTER COMPLIANCE YEAR FOR ALL MINING COMPANIES:

• 1st OF MAY 2014 ALL MINING COMPANIES SHOULD HAVE BEEN CHARTER COMPLIANT as per section 100(2)(A) of the MPRDA

• All mining stakeholders that adhere to Section 100 (2)(a) of the Mineral and Petroleum Resources Development Act (MPRDA) will automatically be Mining Charter complaint.

• Charter Compliancy will contribute to the National Development Plan, Rapid Economic Transformation and the Sustainability and Growth of the South African Economy.

• By enforcing the Charter Compliancy Implementation from the 1st of May 2014, the mining industry stakeholders and in particular the mining producers will be embracing the National Development Plan’s Vision for 2030 from 2014.

• The Department of Mineral Resources has all the powers to enforce the law by using the clauses in the MPRDA that will penalize and address charter non compliance and defaulters of the law.

• We urge the department to be proactive in enforcing that the MPRDA and Charter compliancy should be adhered to by stakeholders.
Recommendation

THE ALIGNMENT OF THE MINING CHARTER WITH DTI’S B-BBEE CODES OF GOOD PRACTICE

• The alignment of the Mining Charter with DTI’s B-BBEE Codes of Good Practice has not been made.
• We suggest that the immediate alignment of the Mining Charter with DTI’s B-BBEE Codes of Good Practice must be done as it is long overdue to address transfer pricing and charter non-compliancy, resource curse, service delivery protests and xenophobia by mining stakeholders.

BENEFICIATION AN ENGINE FOR ECONOMIC GROWTH

• Section26 (3) of the MPRDA states that “any person who intends to beneficiate any mineral mined in the Republic outside the Republic may only do so after written notice and in consultation with the Minister”
• Section26 (3) of the MPRDA can be used to assist government in determining the true value of the commodities being transferred to the end user/consumer/beneficiators to address transfer pricing and charter non-compliancy.
• Section26 (3) of the MPRDA will also enable the DMR to encourage foreign companies to beneficiate locally, when those companies seek written approval from the ministry to beneficiate offshore.
• Companies that are in breach of section 26 (3) should be penalized for sabotaging beneficiation and industrialization of the South African Economy.
• Government Should
  — Abolish transfer pricing, Avoid making loans in a negative credit rating environment.
  — Create a meaningful tax environment that will prevent the erosion of capital

MINERALS AND MINING DEVELOPMENT BOARD

• We are aware that the Minster is in the process of establishing the Minerals and Mining Development Board as per sections 57 to 68 of the MPRDA. We look forward to robust stakeholder participation in the board.
• The Minerals and Mining Development Board consists of all Mining Stakeholder leaders and will assist in collectively addressing the challenges of charter non compliancy, transfer pricing and the achievement of the NDP.
THE SOUTH AFRICA FIRST STRATEGY!!

• All South Africans should be committed to a South Africa economic and investment strategy and model. That will ensure the economic sustainability of the country and the people of South Africa.
• Canada provides an excellent example of the country first policies and sentiments. E.g:
  – The Canadian government blocked BHP Billiton's $39 billion bid for Potash Corp, the world's biggest producer of a key crop nutrient, halting what had been the world's biggest takeover.
  – Industry Minister Tony Clement said, "In Canada, our natural resources are an important economic driver, ...I have come to the conclusion that BHP Billiton does not present a likely net benefit to Canada.” (2011).
• Like Canada, South Africans must adopt a ‘South Africa First!’ Strategy for the net benefit to South Africa.
This land, the whole land
Will be healed, must be healed

These brazen cities, the swollen mines
The mineral of our sweat
The teeming ghetto, the dormitory cells
In towns and squalid squatter camps
Where hope smothers in a tyre
These furnaces of human indifference must incinerate
With all the heat of a healing fire

Those were the dark ages of mining
And now the winds of change are blowing
A brighter new future our way-
A future of Global Mining Transformation
A future of the paradigm shift

This land, the whole land
Will be healed, must be healed

- Don Matera