

Assessment of Mining Charter

Challenges facing sector

The Mining Charter can be used to regulate and empower historically disadvantaged South Africans, but there are problems with mining companies following what the Charter says writes **Mzukisi Qobo**.

It is nearly a decade since the promulgation of the Mining Charter in 2002 with amendments in 2010. Government has cited lack of adherence to the Charter as the main reason for its review. In its Mining Charter Impact Assessment Report, government highlighted various failings by the mining industry, notably employment equity, mine community development, housing and living conditions, procurement and beneficiation.

Some observations by government, in particular those relating to employment equity, were validated by the Employment Equity Commission and the Human Rights Commission, whereas others were based on anecdotal evidence and guesswork. The key point though is that the mining industry did not even need a Mining Charter to do the right thing.

Some companies failed to submit reports on their performance on time. Yet, industry's slow action or neglect made it necessary to have a tightened version in the form of an amended Mining Charter.

This foregrounded a climate of mistrust between government, industry and labour, and later culminated in conflicting reports about performance before parliament during the course of 2011.

The mining industry conceded before the Portfolio Committee on Mineral Resources that 'mining companies could and should have done more under the previous Charter...'

The amended Mining Charter was intended to strengthen the focus on transformation objectives and ensure implementation. The core idea of a Mining Charter was to shift historical patterns of ownership that continued in the mining sector well into democracy. The Charter was developed as an instrument to enforce transformation, in particular to de-racialise economic participation and ownership, as well as to address issues of equity, and more broadly the historic underdevelopment of black communities.

Since democracy, there have been criticisms levelled that the mining industry is moving at a tortuously slow pace on

broadening representation and ownership. Apart from the bigger concerns of shifting patterns of economic ownership, there has also been slow progress in using the proceeds of mining to create economic and social dignity in mining communities.

Adversarial relations between government, industry and labour have not helped in structuring a more productive engagement platform to create changes in the sector. This was obvious in two instances.

The first was when the Minerals and Petroleum Resources Development Act was adopted in 2002 calling for the conversion of privately-held old-order rights to new order rights to be regulated through licensing by the Department of Minerals and Energy (DME) (now Department of Mineral Resources - DMR).

The second was during the presentations before parliament on progress made by mining companies in implementing the Charter. There seems to be a natural tension between the social partners when it comes to the area of mining. This is understandable given the



Mine workers at work underground.

centrality of this sector in the South African economy. This was particularly the case in relation to low wages, dehumanising hostels, and in serving as an economic scaffold for the apartheid social structure.

Much of the resentment between parties is rooted in history. There is a strong sense that the sector can do more to contribute to economic development and social change in South Africa.

REVISED MINING CHARTER 2010

Transforming the South African mining sector, especially to overcome marginalisation and create meaningful opportunities for historically disadvantaged groups, is the main thrust of the Charter. It is given force by section 100(2) of the MPRDA (Mining & Petroleum Resources

Development Act) of 2002.

The Charter is centred on the following objectives which are to:

- promote equitable access to South Africa's mineral resources;
- expand opportunities for historically disadvantaged South Africans (HDSA) to enter the mining industry;
- utilise and expand the existing skills base for the empowerment of HDSA and to serve the community;
- promote employment and advance the social and economic welfare of mine communities and major labour sending areas;
- promote beneficiation (making products from primary resources); and
- promote sustainable development.

It is structured around nine elements, including:

- minimum ownership target of 26% of black equity by 2014;
- procurement and enterprise development, with a minimum of 40% of capital goods (inputs into mining processes) procured from Black Economic Empowerment (BEE) entities by 2014;
- beneficiation;
- employment equity, with a minimum 40% HDSA representation across different levels of management by 2014;
- human resource development with a target of 5% of the annual payroll of the mining industry invested in this by 2014;
- mine community development in line with municipalities, integrated development plans;
- provision of dignified

housing and living conditions, including the conversion and upgrading of hostels into family units by 2014;

- sustainable development and growth of the mining industry; and
- monitoring and evaluation (reporting process) of the implementation of the Charter.

It is, however, not set out clearly how the process of reporting should happen. There is a lack of clear guidelines regarding how the actual monitoring and evaluation will be undertaken and how to mediate conflicting interpretation of targets. There is also no provision for an independent assessment that all social partners should agree upon. Further, the amendment of the Charter is left to the discretion of the minister, with no provisions regarding the conditions under which a review can take place.

So it is no surprise that government and industry went head to head in parliament arguing over the precise standards used to measure progress in the implementation of the Charter. The disagreement was centred on government's industry progress report that set the scene for the unveiling of the revised Mining Charter, but also on how government will undertake reviews in future. The Chamber of Mines, in particular, argued that there were misunderstandings on reporting requirements and definitions.

INDUSTRY'S NON-COMPLIANCE

The following is what DMR highlighted concerning industry's lack of compliance with the Mining Charter. Very little progress in human resource development, with functional



Mine worker returns home after a shift.

literacy still averaging 17.1%, career-pathing at 17.1% and mentoring of empowerment groups at 11.4%. Further, skills development was also lagging.

On employment equity, DMR concluded that only 37% of companies had developed employment equity plans, with no evidence of relevant reports submitted to the department. Participation of HDSA at management level was also at an unacceptably low level, with only 26% of mining companies achieving the 40% threshold.

On the development of mining communities, government's assessment indicated only 63% of companies that had engaged in consultation with communities, while only 49% were involved in the formulation of Integrated Development Plans in mine communities.

Regarding housing and living conditions, government reported that only 26% of companies provided housing for their employees, while only 29% improved the existing standards of housing. Government also noted that the occupancy rate per person per room remains high, even though it has been reduced from 16 to four, and with unhygienic conditions detected in some dwellings.

The Chamber of Mines presented a different picture to that of government. It argued that ownership averaged 28%, with no Chamber member having less than 15% as required in the Mining Charter. Accordingly, the Chamber viewed its members as collectively exceeding the Charter's 2010 targets for employment equity across a range of levels. The only exception was core and critical skills for which the Chamber

provided no figure and which the Charter outlines as a 15% target.

On community development, the Chamber claims to have spent a total of R960-million in 2010, with elimination of hostels and significant reduction of occupancy rates at the end of 2011. There were, however, no specific figures provided. One of the issues pinpointed by the Chamber that disadvantages its members is lack of rapid feedback from DMR on implementation of the Charter as well as independent verification.

On other elements of the Charter, including procurement and ownership, the Chamber scored the mining industry above the Charter target or rationalised an inability to meet targets as a result of lack of clarity of requirements or structural factors to do with funding, especially in the case of BEE ownership. As correctly pointed out by the National Union of Mineworkers (NUM) during its own submission at the public hearings, one of the weaknesses of the Chamber's report was that its figures were averaged.

However, given the capacity constraints within the DMR, and the complexity of the Charter's requirements, the need for an independent verification of companies' performance in meeting targets would build confidence in the process.

For its part, NUM laid emphasis on a number of principles to underpin the Mining Charter process. The focus should be on empowering mineworkers, host communities and sending communities which are only partially provided for in the Charter. The process should also allow for the setting up of Employee Share Ownership

Schemes (ESOP) to cover mineworkers, with the introduction of ESOP as part the MPRDA review as compulsory. It should also allow for exploring new avenues for community empowerment through trusts and other forms that a parliamentary and DMR study process could determine. Finally, it should prioritise the development of a mining sector strategy.

MINING SECTOR CHALLENGES

Reporting by both government and industry is averaged and does not spotlight specific sectors, making it difficult to get a proper view. There is an on-going process, which is part of the ANC's discussion on the role of the state in the minerals' economy, to look at the future of the sector, and to refocus it to play a heightened developmental role.

For the mining industry, the starting point in undertaking any far-reaching change is to have a transparent and structured dialogue between government and industry, as they both have a big stake in ensuring the long-term survival of the sector. This is especially so in the context of the ANC's Report on State Involvement in the Minerals Sector (SIMS Report) which was a study commissioned by the ANC at the 2010 National General Council in response to calls from the ANC Youth League for nationalisation.

The SIMS Working Group chaired by Enoch Godongwana deals with the various responses to the report by selected ANC researchers. The mining sector was also invited by the ANC to respond to the SIMS Report. This was an important step towards forging a productive conversation

Unlocking labour laws

Vulnerable workers and proposed amendments to the Labour Relations Act

about the future of the sector.

There are some far-reaching proposals that are made by the ANC's SIMS committee that could be game-changing for the Mining Charter if they were adopted. These include the introduction of a State Mining Company and its special status as an empowered entity that could play a critical role in accelerating the achievement of ownership targets for HDSA.

The SIMS proposals also include the establishment of a wealth fund that could perform various functions including promoting the development of mining communities, building new supplier sectors, and accelerating human resource and technology development. These proposals are based on the assumption of higher levels of taxation, resource rent, from the mining industry to go towards transformational objectives.

These debates suggest a need for a more structured dialogue between government, industry and labour to create a new basis for transforming and managing the sector. If the social actors move fast in tackling the challenges in the mining sector, and reposition it as a powerful instrument for transformation, a new social dialogue that resets the tone of engagement is essential. In the absence of this divergent views and conflicting measurements of targets set by the Mining Charter will continue. ■

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Introduction

Cabinet approved the Labour Relations Amendment Bill in March this year. Whilst the Bill is not law, indications from the broad consensus achieved through the National Economic Development and Labour Council (Nedlac) process, suggests that the Bill is likely to be passed into law later this year.

In general many of the amendments are labour friendly and seek to improve the position of vulnerable workers, regulate labour brokers, fast track enforcement of Commission for Conciliation, Mediation and Arbitration (CCMA) awards and strengthen trade union's entitlement to organisational rights.

Strengthening the position of employees placed by labour brokers

One of the key issues addressed in the Bill is the position of vulnerable workers, especially those employed by labour brokers. Labour broking has received much public attention, especially from the Congress of South African Trade Unions (Cosatu), comparing it to modern day slavery and calling for a total ban.

Unions argue that the practice drives wages down, burdens families as workers placed by brokers typically do not enjoy benefits like medical aid and pension funds, and undermines collective bargaining and union organising efforts as workers move around from workplace to workplace. The government has heard these concerns and has in the amendments proposed a range of protections for low income workers and atypical / non-standard workers but has not proposed a ban on the practice of labour broking.

With respect to terms and conditions of employment, employees placed by labour brokers must be paid in accordance with any employment law (e.g. laws setting minimum wages), sectoral determination or collective agreement concluded in a bargaining council applicable to the client. So the terms and conditions of employment must obviously be lawful, but do not have to be similar to those paid by the client to its own employees unless a sectoral determination or collective agreement applies.

Similar terms and conditions do though apply when the client is assumed to be the employer and that occurs if the employee earns