

NATIONAL UNION OF MINEWORKERS

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NUM SUBMISSION: PUBLIC HEARINGS- MINING CHARTER REVIEW, 24 and 26 August 2011

A. BACKGROUND

- The office of the General Secretary of NUM received an invitation from the office of the Portfolio Committee Chairperson on Mineral Resources inviting the Union to participate on the Public Hearings on the Review of the Mining Charter.
- The NUM General Secretary accepted the invitation and due to both COSATU CEC and the SACP CC meetings that are concurrently sitting during this week the General Secretary would not be available in person but has delegated the NUM Parliamentary Office to participate in the process.
- The Mining Charter review process has been concluded with the involvement of all stakeholders with the exclusion of the public comments and on our view irrespective of contents during the deliberations on the Charter Review- this process was inclusive.
- The Portfolio Committee organized public hearings on 30 March 2011 at Carletonville and on 31 March 2011 at Matlosana, with this NUM had an organizational reservation on the approach as follows:
 - I. Public hearings held after the Charter Review process has been finalized, this might be rules of Parliament but surely they create an unnecessary conflict between the Department and the Parliamentary process
 - II. Whether after consulting public, the Parliamentary process will set in motion another review process

B. INTRODUCTORY COMMENTS:

- The Mining Charter is meant to address both the Constitution and the MPRDA as follows:
 - i. **SA Constitution**- the imperatives of redressing historical and social inequalities as stated in Section 9 on equality (and unfair discrimination) in the Bill of Rights
 - ii. **MPRDA**- Section 100 (2) (a) which stipulates that, “ to ensure 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.

- The objectives of the Mining Charter,
 - I. To promote equitable access to the nation’s mineral wealth resources to all the people of South Africa
 - II. To substantially and meaningfully expand opportunities for HDSA to enter the mining industry and to benefit from the exploitation of the nation’s mineral resources
 - III. To utilize and expand the existing skills base for the empowerment of the HDSA and to serve the community
 - IV. To promote employment and advance the social and economic welfare of mine communities and major labour sending areas
 - V. To promote beneficiation of the South Africa’s mineral commodities, and
 - VI. Promote sustainable development and growth of the mining industry
 - Our view is that these objectives address the stipulations of both the Freedom Charter and the MPRDA.

C. CONTENT, “ELEMENTS OF THE MINING CHARTER”

i. **Ownership and joint ventures**

- a. Historical background (apartheid and racial laws) and the Freedom Charter as the basis to have this clause on the Mining Charter.

- b. Freedom Charter, “The National Wealth of our country, the heritage of all South Africans shall be restored to the people. The mineral wealth beneath the soil... shall be transferred to the ownership of the people as a whole.”

Comment: the 26% goal has not been achieved and then revised for 2014 in the Revised Mining Charter. **The failure to comply with the charter has more to do with the preparedness of the company to transform on the ownership. Sometimes even the interest by BEE partners on share-ownership remains a challenge because the industry remains untransformed at the level of Black people directly involved with day to day activities of the Mining Industry.**

ii. Procurement and Enterprise Development

- Unlike the Ownership above, this pillar’s centrality is development of enterprises which will then be central in the job creation drive. The pervasive unpreparedness by the industry to meaningfully use the services of the HDSA companies is a direct contestation with the notion of broadening the economic freedom
- **Comment:** the stipulation has been reviewed and in the Reviewed Charter its minimum of 40% by 2014
- **This pillar should have been the main focus on ownership because of the role and potential of the Enterprise Development on mining linkages and job creation.**
- **The capacity to monitor without relying on the industry reports from DMR and preparedness by the Industry to contribute meaningfully on Enterprise Development, capacity of SMME’s and their geographic location are the main challenges in this regard**
- **Some BEE companies not necessarily contributing on job creation on the basis that they do not focus on developing capacity internally but purely rely on importing goods for supply**

iii. Beneficiation

- On the basis for the paradigm shift away from the resources based to the knowledge based economy, Mineral Beneficiation is critical as outlined by the ANC NGC, September 2010.
- As Beneficiation is stipulated under Section 26 of the MPRDA and within the Mineral Beneficiation strategy by DMR, our view is that this pillar of the charter be dealt with concurrent with the amendments to MPRDA and the Mineral Beneficiation strategy

iv. Employment Equity

- This pillar is meant to address the “Irish Coffee syndrome” in the Mining Sector, majority black and below with dominantly white on top and sprinkled with chocolate
- **Comment:** the stipulation has been reviewed and in the Reviewed Charter its minimum of 40% HDSA demographic representation by 2014, in the following levels:
 - Executive Management(Board)
 - Senior Management(Exco)
 - Core and Critical Skills
 - Middle Management
 - Junior Management
- **NUM objection:** the inclusion of white women has been used as reverse racism by white males. Our view is that white women should not be beneficiaries in the Employment Equity but could be beneficiaries only on Employment of women underground.

v. Human Resource Development

- **Functional literacy:** this should be engaged in line with the millennium development goals of the UN. **Parliament**, must call for companies to have focused and worker participatory process on Adult Basic Education and Training. Whilst focusing on ABE, companies must be compelled to have clear plans for Training and Development. Life skills should be integral part of ABET. **Parliament** must insist that fighting illiteracy should not be compromised by productivity.
- **Career Path:** career plans and personal development plans should be developed for all the employees and not only for management. Recognition of prior learning should remain an integral component of the industry career path approach. The implied notion of blasting ticket and Onsetter’s ticket being the only career fields for black mineworkers should be rejected by **Parliament**. **Parliament** should call for the availability of bursaries for both mineworkers and their beneficiaries on the basis of career choices of the workers and their bursaries, and the release for full time study purpose of the employed workers without pay but with retention of their employment status.
- **Mentoring of Empowered groups:** ensure that empowered groups/individuals are allocated mentors and deployed to practically test with the supervision of their mentors. Mentoring should be combined with understudy in areas of transformation priorities.

vi. Mine Community Development

- 63% engaged in Community consultation process, irrespecting of the content of consultation and the view by the community
- 49% participated in the formulation of IDP's, even in government departments just participation does not yield to budget allocation or expenditure incurred
- Only 14% extended their participation in their Labour sending areas
- 37% showed proof of expenditure on community projects identified by the IDP
- This therefore is the reason why hosting communities and mining towns become either Liquor vendors or ghost towns

vii. Housing and Living Conditions

- Chamber of Mines tell Parliament that majority of their members do not have hostels- when majority of gold mines in Gauteng(carletoville and Westonaria), Free State(Welkom), North West(Klerksdorp) and Platinum mines(Rustenburg) still dominantly have hostels converted partially or not converted at all the only change would be to reduce occupancy concurrent with workforce reduction, Mining contractors with hostels, all their argument on either non compliance or slow pace is on the basis that according to their view this is not their core business.

viii. Sustainable Development and Growth of the Mining Industry

- As things stands or on the basis of either the review of the Mining charter and industry strategic plans including the DMR strategy, the industry needs a comprehensive approach that must outline but not limited to the following:
 - a. Growth, redistribution and employment
 - b. Ownership models and funding
 - c. Health, safety and environment
 - d. Role of mining in the economy through Growth Path, IPAP2 and Industrial Strategy
 - e. Competitiveness

D. SUGGESTED ACTIONS REQUIRED FROM PARLIAMENT AFTER THE PUBLIC HEARINGS:

1. Karl Marx was correct when saying “History of all hitherto existing society was history of **Class struggle**”.
 - i. This is the basis why Chamber of Mines would come to Parliament and differ with DMR on Ownership purely because COM’s figures are averaged, the question would why ownership should be averaged

2. Amica Cabral was correct when saying “Tell no lies and claim no easy victory”, this being the confirmation of the reality that as it stands and reviewed chances of 100% compliance with the charter are very minimal because of the following:
 - a. DMR, on the “Reporting(monitoring and evaluation mechanism) has already created platform for non compliance, “The department shall monitor and evaluate, taking into account the impact of material constraints which may result in not achieving set targets”, this means that all what companies must do is to find material constraints and that non compliance will be condoned
 - b. COM already cast aspersion on either the capacity of DMR or the Integrity, in their submission they are calling for an independent Verification but again attack the Moloto report and then believe only and only its figures must be accepted on both and employment equity, then they

3. **Parliament:** should change the focus on the debate on empowering individuals and introduce a new debate on empowering mineworkers, host communities and labour sending communities. This could be achieved in the following areas:
 - a. Employee Share Ownership Schemes: this should cover mineworkers employed in the Mining Industry, **the current review of the MPRDA must include a section on ESOPS as compulsory share for mineworkers**
 - b. Community Trusts/ Special Purpose Vehicles: this should cover host communities; Parliament together with DMR must commission a study on the current community trusts and ownership by the traditional authorities. This study must look at best options available for Community ownership which will not defer from community to

community or traditional authority to traditional authority but define how these funds will be used for socio-economic development of these communities.

4. **Parliament must consider mandating both DMR and COGTA on development of Mining Community investment policy,**
 - a. Merger of MDA and Teba Development Trust, this will be used as a Special Purpose Vehicle for the Labour Sending Communities, this merger must then create a new entity defined by legislation and given the mandate to engage on development of Labour sending areas with specific purpose of business development, infrastructure development and special developmental needs for permanently disabled mineworkers. **Parliament through the Portfolio Committee on Mineral Resources must convene a meeting with NUM, Chamber of Mines, MDA Board and Teba Development Board to assess the process towards the finalization of the merger and process towards the new entity.**
 - b. **Parliament:** must mandate the Minister of DMR in consultation with the Ministers of Rural Development and COGTA to develop guidelines and approaches to govern the ethnographic community consultative and collaborative process prior implementation of mining project.
 - c. **Parliament:** must mandate the Minister of DMR in consultation with the Ministers of Rural Development and COGTA to develop guidelines and approaches to govern both the involvement of the mining industry in Municipality's IDP process and budget contribution, this must explore possibilities of recognizing both Private-Public Partnerships and Private-Private Partnerships.
5. **Parliament:** must call in line with the ANC NGC, September 2011 resolution, for the DMR and National Planning Commission to prioritize the **Development and Adoption of the Mining Sector Strategy**, using the current DMR strategy.
 - a. **This strategy be developed in line with** the ANC's **Ready to Govern: 1992**, stipulates that "The ANC will, in consultation with the unions and employers, introduce a mining strategy which will involve the introduction of a new system of taxation, financing, mineral rights and leasing. The strategy will require the normalization **of miner's living and working conditions**, with full trade union rights and an end to private security forces on the mines. In addition, the strategy will, where appropriate, **involve public**

ownership and joint ventures. Policies will be developed to integrate the mining industry with other sectors of the economy by encouraging mineral beneficiation and creation of a world class mining and mineral processing capital goods industry.”

- b. That DMR work jointly with the Department of Trade and Industry on Enterprise Development role of the Mining Industry. **The Portfolio Committee on Mineral Resources must facilitate with the involvement of DMR and DTI with consultation and collaboration of Organised Business in Mining and Organised Labour in Mining-convening of the Procurement and Enterprise Development Summit before the end of term of Parliament.**
6. **Parliament:** must mandate both the Council for Geosciences, Mintek and Mine Health and Safety Council to fast track technological development on possible advanced technology to detect seismicity occurrences.
7. That Parliament mandates the BEE Council and DTI, to develop a common formula to be used when assessing **Ownership** in the Mining Industry and that all parties involved should be compelled to use the same formula.
8. That Parliament investigates possibilities of making the Mining Charter a concessionary contract to either a Mining Right or Prospecting Right, this could be made possible by **changing the Licensing regime on the MPRDA when amendment are finally presented to Parliament.** Then insert a clause that stipulates that failure to achieve 70% of the Concessionary contract clauses/stipulations the DMR would revoke the Right and the place on auction the Right for bidders who would perform the Right according to the Concessionary Contract.
9. This could also led to strengthening Section 47 of MPRDA- suspension/ cancellation of rights and section 99 of MPRDA- penalties
10. **Parliament:** must propose the introduction of **Minerals Beneficiation Commission to be under DTI and composing the following stakeholders: DHE, DMR, Mintek, CSIR, DTI, DST, Organised Business and Organised Labour in Mining.** This commission must be charged with the responsibility of developing Mineral Beneficiation strategies and ensuring focus on Mineral Beneficiation.

11. During amendments to MPRDA considerations be made on possibilities of include **penalty** on failure to beneficiate minerals(as per the mineral beneficiation strategy) and imposition of extra tax on raw material exportation, this be included at section 99 of MPRDA
12. Parliament request the Minister of DMR, DED, COGTA and Rural Development to consider development of Policy perspectives in the following areas:
13. Social Labour plan- ensure that Social Labour Plan is made a mandatory negotiation process with organized Labour and consultation with relevant Communities is outlined and adhered to.
14. **Traditional Authority** or **Community ownership** or percentage, department of Mineral Resources and Co-operative governance develops a legislation that defines the approach, defines the traditional authority or community ownership and processes governing the management and utilization of the funds accrued and then ensure consistency on both Traditional Authorities and Community benefits.
15. **Community development**, ensure the merger of **Teba Development Agency and Mining Development Agency**- necessary Legislation promulgated and new agency (focusing on both hosting and labour sending communities)started under the responsibility of DMR, this should be a **Tripartite Development Agency**. The agency should be budgeted for by Department of Finance, budget for DMR and through the company's development funds. The **social funds** that both the DMR and Chamber of Mines are not aware of how should then be managed will then be channelled through this agency.
16. Parliament should call on the Cabinet to finalize and call for public hearings on **State Mining Company**. The SOMCO should have a constituting Act of Parliament, Design and operation different from the current state of enterprises (SOE), Consolidate all state ownership and investments in the mining industry, SOMCO focus on Coal, Uranium, Iron Ore and Manganese- **this on the basis of the role these minerals have on both industrialization and energy security**, proceeds/money generated from the SOMCO be placed in a ring-fenced

account and be used as follows: re-investment to SOMCO, funding free and compulsory education, funding of National Health Insurance and Funding of Rural Development.

17. **Parliament:** must develop a resolution to exclude white women on Employment Equity Beneficiaries but allow them only on underground employment of women. **Parliament** must also speak against the current situation where on underground employment, Black women are employed for menial and less remunerating jobs whereas their counter-parts (white women) are employed for senior administration, management, costing and finance or if underground they only go for skilled work **Parliament:** institute an implementation mechanism for the last Parliament's resolution on the **need for Parliament to investigate both living and working conditions of Mineworkers**, this motion was proposed by the current Deputy Minister of Mineral Resources and adopted by Parliament.
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19. **Parliament:** whilst encouraging companies to have homeownership programmes negotiated with Unions, discourage any attempt on the side of the employers to enter into this venture as means of alternative income. This remains the social responsibility for companies towards their employees.

SUBMISSION MADE FOR AND ON BEHALF OF THE NATIONAL UNION OF MINEWORKERS.

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