



# MEDIA STATEMENT

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**For immediate release**

## CHAMBER SERVES REPLYING AFFIDAVIT

**Johannesburg, 18 August 2017:** The Chamber of Mines today served its replying affidavit in the High Court of South Africa (Gauteng, Division, Pretoria) interdict application, in response to the answering affidavit delivered by the Minister of Mineral Resources on Monday, 7 August 2017. This is in respect of the Chamber's application for an urgent interdict against the implementation of the DMR's Reviewed Mining Charter.

The Chamber notes that the Minister's response does not deal with the matter at hand – that is the shortcomings of DMR's Reviewed Charter. Instead, the Minister focused on trying to undermine the credibility of the industry's transformation journey.

The Chamber reiterates its continued commitment to real transformation, implemented with due regard to what is achievable, bearing in mind the realities of the situation the industry faces. The unilateral development and implementation of the DMR's Reviewed Charter would not serve the interests of South Africa and its people. It is aimed at benefitting a select few, will destroy investment, lead to further job losses and will cause irreparable damage to the mining industry.

### Primary issues dealt with

The legal documents related to this matter may be found at <http://www.notourcharter.co.za/>. The full replying affidavit will be made available in due course and may be accessed at the same location. Some of the issues it covers are included below:

- It addresses the DMR's assertion of "extensive" or "vigorous consultation" preceding the publication of the 2017 Charter. Given the nature and extent



of the Charter, its profound effect on the mining industry and the absence of guidelines about the content of the Charter in the Minerals and Petroleum Resources Development Act (MPRDA), intensive bilateral or multi-lateral negotiations and true engagement, as was the case prior to the publication of the 2004 and 2010 Charters, would have been appropriate. This was not the case this time. The Chamber and its members have therefore been denied their right to a fair administrative procedure guaranteed by Section 3 of the Promotion of Administrative Justice Act (PAJA) as read with Section 33 of the Constitution. The Chamber is therefore seeking that the implementation of the DMR's Reviewed Mining Charter be interdicted, pending the hearing in due course of the Chamber's judicial review application to be instituted soon thereafter. The review application will seek to have the Reviewed Charter set aside as invalid and unlawful.

- The Chamber also disputes the DMR's assertion that the Mining Charter is law. The fact that the Charter is enabled by the MPRDA does not mean that it is a law on its own. The Charter does not operate outside the provisions of the MPRDA as a standalone law of general application, which can confer obligations on rights holders and which can supplement or amend the MPRDA and even override other legislation.
- The DMR's answering affidavit alleges that the Chamber's reference to the Companies Act is a fallacy when in fact numerous provisions of the 2017 Charter are in conflict with sections of the Companies Act.
- In terms of ownership, the Chamber's reply points out that at no stage during the negotiation of the first Mining Charter (which came into effect in 2004) was the concept of mining companies having to sustain HDSA ownership at 26% discussed or agreed between the Chamber and the DMR. There was never any requirement for mining right holders to sustain the 26% level. The primary focus was to create access to ownership by a critical mass of HDSA entities that could become self-perpetuating.

The interdict application will be heard on 14 and 15 September 2017.

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