Press Release

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South African Institute of Race Relations
The power of ideas

Media Contact: Terence Corrigan Project Manager Tel: 066 470 4456 Email: terence@sairr.org.za

General Media Contacts: Michael Morris Tel: 066 302 1968 Email: michael@irr.org.za
Kelebogile Leepile Tel: 011 432 7221 ext: 2018 Email: kelebogile@irr.org.za

IRR warns that draft Mining Charter will retard industry growth

If the new draft Mining Charter denotes the direction of mining policy, the mining industry is in for a tough time in the coming years. Despite some improvements over the version produced to widespread dismay in 2017, it does not provide a framework for a competitive and sustainable industry.

The IRR has long believed that South Africa's mining industry has an indispensable role to play in leading the economic renaissance that the country so desperately needs. This is, however, contingent on an appropriate environment being in place to facilitate it – one that makes investment (and the risks that this entails) attractive.

The draft Charter does little to create this environment.

One point of particular concern is the requirement that companies seeking new mining rights must cede a 5% 'free carry' to their employees and to communities. They will thus be required to give 10% of their equity away. As respected mining expert Peter Leon remarks: 'This is likely to render marginal mining projects uneconomic and is a significant cost to shareholders.'

In addition, if the holder of a new mining right fails to pay dividends for five years, it must thereafter provide 'trickle down' dividends to employees and communities, calculated as 1% of earnings before interest, taxes, depreciation and amortisation. This is also likely to add to the cost of conducting business. It is also worth noting that paying such dividends to certain shareholders and not to others may be in contravention of the Companies Act of 2008.

Moreover, weighty demands are imposed on mining companies to procure locally. Some 70% of capital and other mining goods must be purchased from South African manufacturers, while 80% of the services that mines require must be supplied by South African companies. There are also substantial requirements for sourcing many of these goods and services from black-owned companies. It is not clear whether such companies already exist sufficient to the industry's demands (especially in the field of capital goods, such as drilling equipment), and 'establishing' them may prove an additional cost.

The limitation on foreign procurement is contrary to South Africa's binding obligations under the General Agreement on Tariffs and Trade (GATT) of the World Trade Organisation.

Beyond this, the foreign suppliers from whom 30% of mining goods and 20% of services may be purchased must contribute 0.5% of the annual turnover they generate from South African mining companies to the Mandela Mining Precinct for research. This 0.5% levy is a tax, which the mining minister has no authority to impose, and which can be introduced only by Parliament.

The charter also suggests a large degree of ministerial discretion. It empowers the minister to 'review' the charter by notice in the *Gazette*. The implication is that he will be able to amend it unilaterally.

Taken together, these measures impose burdens on the mining industry that largely overshadow the relief granted by the charter's recognition of empowerment deals that reached the 26% target before BEE beneficiaries sold out. Such companies will have to top up by only 4 percentage points to reach the 30% black ownership now required. This matter has received widespread media attention, and the new approach is largely a recognition of the ruling of the High Court in April this year.

The framework the draft charter creates will inevitably hold the mining industry back. The upshot will be a missed opportunity, as South Africa sits atop a multi-trillion rand mineral endowment, but is unable fully to utilise it owing to poorly conceived policy.

Tomorrow, the IRR will be releasing a comprehensive analysis of the prospects for South African mining. The report, 'Sunset or Sunrise for Mining in South Africa', notes that while the future of the industry is vital to the future of the country, fundamental choices will determine whether it becomes ‘a sunset industry beset by rising costs, technical challenges, adverse policies, and political hostility’, or a sunrise industry that is ‘able to transcend its current difficulties – and to take on a whole new lease of life with the help of the country’s enormous mineral wealth’.

The IRR invites all South Africans to join it in striving for a better South Africa by SMSing their name to 32823.

Ends.