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# Transformative Pathways in South Africa's Mining Sector: Chartering an ESG-Aligned Era

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# Preface

*Transformative Pathways in South Africa's Mining Sector: Chartering an ESG-Aligned Era* delves into South Africa's Mining Charter ("the Charter") and its potential to drive a broader set of long-term growth objectives within the country's mining sector. The Charter's strengths and weaknesses are assessed, considering historical disparities, contemporary ESG imperatives and issues currently facing

the country's mining industry. The paper explores if the Charter is a strategic pathway or a roadblock to realising industry transformation and growth. Moreover, it highlights how Charter lessons may be leveraged by stakeholders both from within and outside of the industry to develop effective ESG targets and, importantly, outcomes.

## Acknowledgements

We are grateful to industry experts and stakeholders who contributed their on- and off-the-record perspectives that informed this paper. The on-the-record interviewees include:

### **Dr Tsakani Mthombeni**

Executive: Sustainable Development, Implats

### **Mzila Mthenjane**

Chief Executive Officer, Minerals Council South Africa

### **Stefanie Vivier**

Executive: Legal Services, Implats

### **Tebello Chabana**

Senior Executive: Public Affairs and Transformation, Minerals Council South Africa

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# Executive summary

South Africa's mining industry employs around 476,000 people, supports close to 60% of South Africa's exports by value and contributes roughly 7% of GDP. During Apartheid, the industry was renowned for notorious labour exploitation practices. With the dawn of the country's democracy in 1994, concerted efforts to transform South African society, both politically and economically, gained momentum. The mining industry formed a critical part of this transformative focus and effort. First introduced in 2004, South Africa's Mining Charter ("the Charter") was developed with the goal of driving sustainable transformation and overall growth of the industry.

That said, the mining industry is not the only regulated industry that is tasked from a legislative and policy perspective, to achieve transformational and growth targets that better align with the demographic and socioeconomic profile of the country, as well as the objectives of the South Africa government. Various regulated industries are subject to industry specific legislative prescripts to drive industry transformation and growth and, more generally, are subject to the Broad-Based Black Economic Empower Act, 2003 ("B-BBEE Act"), and may have agreed to sector codes, such as the Charter, to achieve the objectives of the B-BBEE Act.

The Charter, in that way, is an effective recordal of core principles to achieve these outcomes within the mining industry.

Since inception the Charter has been amended twice. Over the past two decades, there has been material progress in the

industry's transformation. Few, however, would disagree that more can and should be done. For example, ownership in the industry has yet to fully reflect the country's demographics. In addition, in recent years, in terms of annual production growth and share of global exploration budgets, the industry has taken backward steps. To be sure, the Charter was never intended to be a silver bullet, and in the wider context, mining companies face a host of challenges that impact negatively on industry performance and outcomes.

Around the time of the Charter's introduction, Environmental, Social and Governance ("ESG") emerged as a framework to drive responsible corporate citizenship and holistically sustainable organisational practices. The mining industry has a long history of navigating environmental and social issues and imperatives. The Charter has a significant, but not exclusive, focus on the "S" in ESG. Its history and evolution may provide useful lessons for interested parties both within and outside of the mining industry seeking to develop and achieve worthwhile socioeconomic targets and objectives.

The Charter, however, should not be viewed as an outline to achieve ESG objectives, and players specifically in the mining industry should seek to implement and achieve ESG strategies that take into account broader considerations of environmental, social and governance issues within the unique South African context and the key role the sector plays in the South African economy.



# The Mining Charter

## COLLABORATIVE AND ASPIRATIONAL BEGINNINGS

The Charter was first introduced in 2004 as a policy framework aimed at promoting the transformation of the mining industry, addressing historic inequalities and fostering inclusive economic participation. It was the outcome of a collaborative effort between government, industry and labour with the vision as stated in the Charter of a "globally competitive mining industry that draws on the human and financial resources of all South Africa's people and offers real benefits to all South Africans".

From the outset there was a recognition by all stakeholders that for transformation to be successful, it must be coupled with growth and development of the industry, encompassing increased revenue, production and commercially viable operations.

At that time, the Charter was akin to a social compact between role players rather than a strict legislative or regulatory prescript.

*"The Charter, at conception, was agreed by the industry as well as government to be an aspirational document"*

"The Charter, at conception, was agreed by the industry as well as government to be an aspirational document, and it was treated as such", according to Stefanie Vivier, Legal Executive of Implats, a mining company with extensive operations in South Africa, Zimbabwe and North America.

## HAS IT ACHIEVED ITS OBJECTIVES?

### Transformation: Contested progress

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It is uncontroversial that the mining industry has been committed to achieving the Charter's objectives. This is reflected not only in the measures adopted by the industry and individual players, but also in the industry's active engagement with government. Contested progress has been achieved despite the increased tensions between the industry and government in respect of the targets set and the enforceability of those targets.

Indeed the Charter has contributed to the industry transforming in fundamental ways. For example, prior to the introduction of the Charter, Black ownership in the mining industry was only 2%<sup>1</sup>. By 2018, this figure increased to around 39%<sup>2</sup>.

Despite greater Black ownership, progress with employment equity and enterprise development, among other indicators, there has been increasing disagreement between the industry and government on whether companies are sufficiently complying with the Charter and whether the appropriate level of progress relative to agreed goals and targets has been achieved.

While the industry contends that the sector has exceeded most targets and is on track to do so with others, government highlights that there is a sizeable number of non-compliant companies. The debate is fuelled, in part, by the absence of standardised reporting, as well as a consistent and reliable feedback mechanism from authorities. "In terms of measurable indicators, the Charter is very subjective," according to Mzila Mthenjane, CEO of the Minerals Council South Africa ("MCSA"), a mining industry employers' organisation. A 2019 MCSA study suggests that the industry is meeting many Charter-related goals and objectives. Albeit MCSA acknowledges that this performance is driven by the large companies— thirty-two companies hold 97 mining rights that account for around 80% of industry employment— leading the transformation agenda. "Large companies have done well with Charter compliance because they have the resources to comply. Junior miners do not always have the resources, to do so, given the cost of compliance," added Mr Mthenjane.



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<sup>1</sup> Parliamentary Monitoring Group - Parliamentary Workshop on Mining Sector Transformation 2002

<sup>2</sup> Minerals Council South Africa, *Mining Industry Transformation Progress Report for 2019*



## A shift from collaboration to imposition

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Over time, the Charter evolved in line with the South African government's multi-faceted approach to expedite economic transformation, growth and to realise broader public interest benefits. These efforts are supported by a broad range of legislative interventions that are not industry specific. For example, regulatory interventions to progress public interest benefits in merger transactions under the Competition Act, 1998.

More specifically, the Charter from the outset envisaged continued collaboration between government and the mining industry to ensure that the identified objectives are achieved in a manner that is sustainable for the industry. In accordance with this sentiment and a greater policy drive to effect industry transformation, the Charter has been assessed and reviewed over time—the latest version having been published in 2018. The Department of Mineral Resources and Energy ("DMRE"), as it is now known, over time, clearly expressed its frustration with the progress achieved by the mining industry in compliance with the Charter and sought to strengthen the enforcement of the Charter.

The Charter, of course, speaks to fundamental aspects of mining operations, and the industry and government have been at loggerheads at times over the progress of the mining industry achieving the Charter's targets, especially as the DMRE introduced more onerous and extensive targets as the Charter was revised. While the initial Charter was developed through a collaborative process amongst key stakeholders,

subsequent versions discounted or ignored industry input, and increasingly the government adopted a position of the Charter not being a social compact, but an instrument of regulation. The industry disagreed and launched a legal challenge against the Charter in 2019.

The court ruled in favour of the industry clarifying that the Charter is a policy document and not an instrument of legislation. In other words, the mining industry may voluntarily comply with the targets set out in the Charter, but is not obliged to do so, unless those targets are expressly recorded as requirements to hold a specific mining right in terms of its licencing conditions.

Although compliance with the Charter is voluntary, mining companies will undoubtedly continue to support the ethos and intent of the Charter, recognising that the transformation agenda will produce a more viable and sustainable set of conditions in which to operate.

The Charter, in that way, serves as a useful guide to inform mining companies' strategies, including ESG strategies. As governance standards evolve specifically in respect of ESG, companies should seek to implement ESG strategies that go beyond pure compliance with legal and policy prescripts. From a binary compliance perspective this may seem overly burdensome; however, a shift in approach will illuminate various beneficial opportunities to facilitate company and overall industry growth.



## Mining Charter evolution: Aspirational to prescriptive

### Selected elements of the Charter\*

	2004 Initial Charter	2010 First Revision	2018 Second Revision**
<b>Ownership</b>	26% HDSA Ownership by 2014	30% HDSA Ownership	30% Black Ownership for new mining rights
<b>Employment Equity</b>	40% HDSA at management level	Extended HDSA participation target of 40% to all levels (Board, exco, critical skills, middle management and junior management) by 2014	Board - 50% HDSA, 20% women
			Exco - 50% HDSA, 20% women
	10% women		Senior Management - 60% HDSA, 25% women
			Middle Management - 60% HDSA, 25% women
	To be achieved within 5 years		Junior Management - 70% HDSA, 30% women
			Disabled - 1.5%
			Core and critical skills - 60%
			Representation must be reflective of national or provincial demographics on all categories
<b>Human Resource Development</b>		3% of annual payroll in 2010 growing to 5% of annual payroll by 2014	5% of annual payroll maintained with specifications of types of essential skills and spread across provinces.
<b>Community investment</b>	Emphasis on creation of integrated community development plans	Commitment to community consultation in development of integrated community development plans	100% of projects in Social and Labour Plan to be implemented
	No specific targets set		
<b>Housing and Living Conditions</b>	Establish measures for improvement of housing conditions	Upgrade hostels to family units by 2014	100% compliance with the Housing and Living Conditions Standards
	No specific targets set	One person per room occupancy rate by 2014	
		Ownership options for mine employees by 2014	
<b>Local Procurement</b>	Encouragement of local procurement from HDSA companies for capital goods, services and consumables to stimulate economic development	40% of capital goods	70% of mining goods***
	No specific targets set	70% of services	80% of services***
		50% of consumer goods	

\*This table provides a summary of some of the key elements. The Charters contain more detail on each of the elements.

\*\*A number of provisions in the 2018 Charter were set aside by a court ruling. These include, among others, various specifications on categories of ownership, vesting periods and disposal of BEE shares, limits on the beneficiation equivalent, provisions in relation to inclusive procurement, supplier and enterprise development targets and provisions in relation to penalties and compliance.

\*\*\*Although the section related to inclusive procurement was set aside by a court ruling, the overall targets are included on the table for comparison.

Source: Broad Based Socioeconomic Empowerment Charter for the Mining and Minerals Industry- 2004, 2010 and 2018

An area stakeholders agree is that Black ownership is not sufficiently broad based. One of the main challenges in achieving a broader base of ownership is the nature in which deals have been financed. "A lot of the deals fail, in relation to the ownership target, because the Black shareholders have to sell most of the equity to pay off the debt," said Mr Mthenjane. Financing equity deals is particularly difficult, when the risk is high and capital availability may be low, such as in the initial stages of the mining lifecycle. "Exploration is not a revenue generating activity, and

companies may have to give up equity to a Black partner who does not come with sufficient capital. And so, there's vendor financing, and the vendor may incur a large upfront cost before they confirm if they have a viable commercial proposition," added Mr Mthenjane.

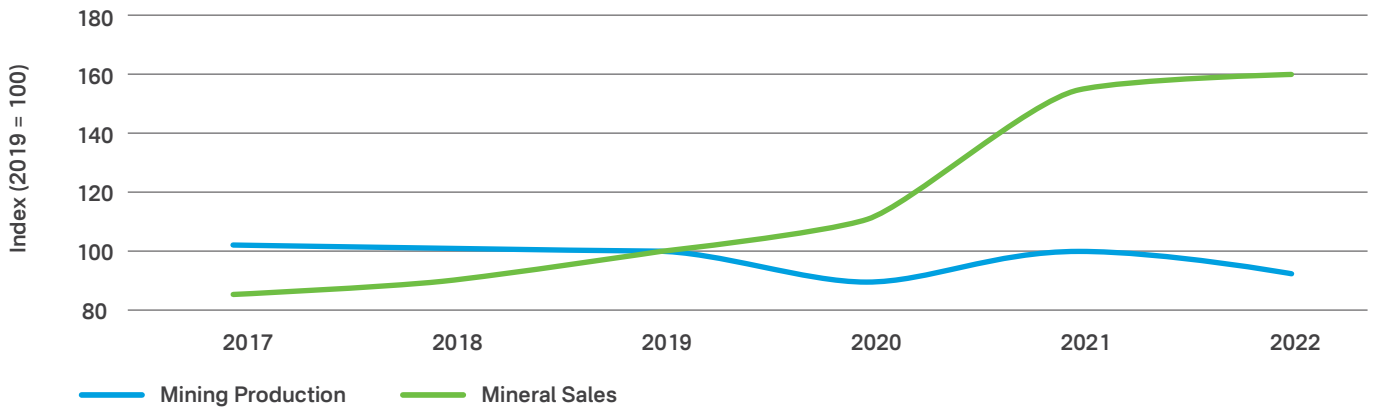
Moreover, operational and market conditions may play out against the investment, resulting in business failure and collapse of the transaction.

## Industry: Size matters

The industry's mineral sales have increased from R125bn in 2004 to R883bn in 2022, according to Statistics South Africa. However, other indicators cast a shadow on the sector's performance.

### Up and down

Mineral sales & mining production, 2017-22

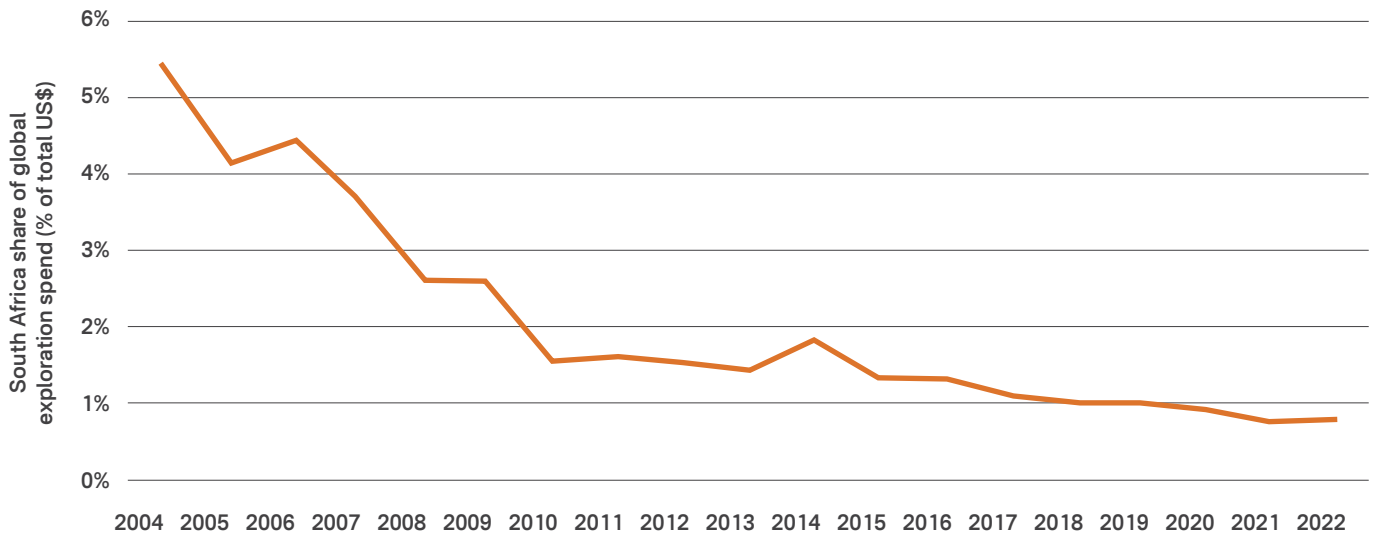


Source: Statistics South Africa

The industry's contribution to GDP declined from around 9% in 2008 to around 7% in 2022. South Africa's share of global exploration spend has dropped from over 5% in 2004 to under 1% in 2022. Mining production has also been declining. For example, production was higher in 2017 than it was in 2022, according to Statistics South Africa.

### Lost opportunity

Share of global exploration, 2004 -22



Source: S&P Global



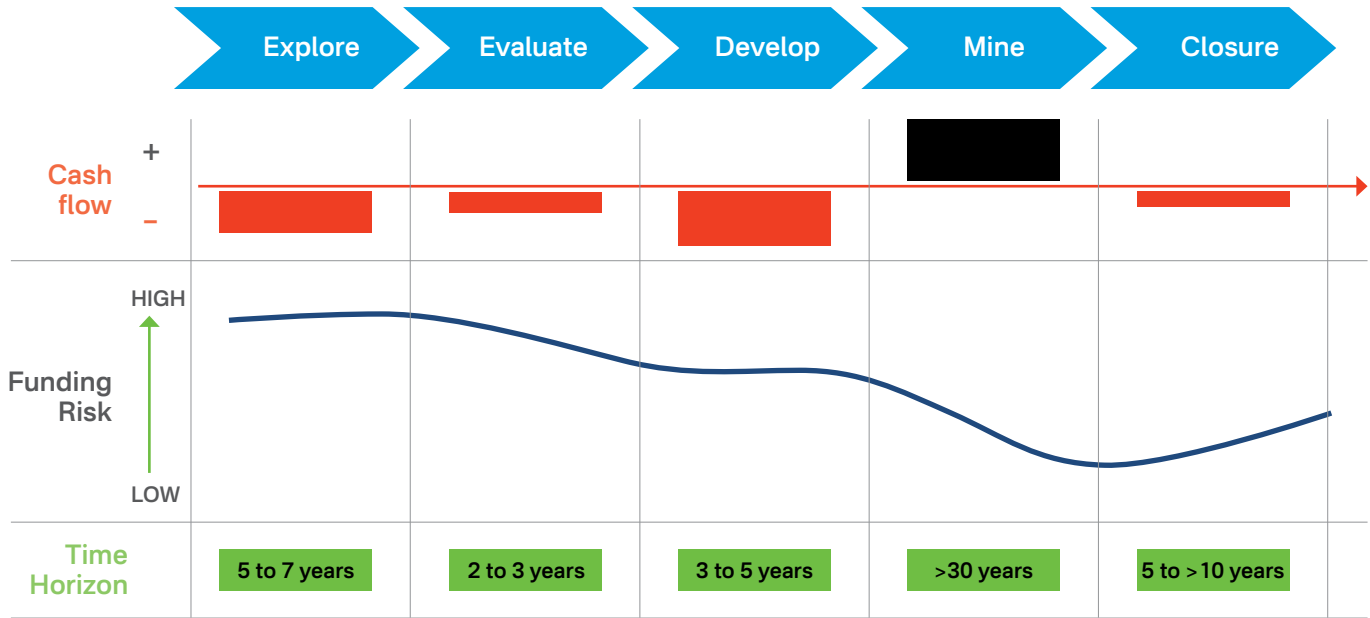
*"Investment decisions require policy certainty"*

## Dissecting sub-par growth

The relatively poor performance of the mining industry over the past two decades suggests that the vision of facilitating sustainable transformation, as well as growth and development of the mining industry has not been achieved. But to what extent can this be attributed to the introduction of the Mining Charter?

The policy uncertainty created by Charter revisions has played a role. Mining projects typically take between one and two decades to generate a positive financial return. "Mining is a capital-intensive and long-horizon activity. So, investment decisions require policy certainty and therefore that rules will not change in a manner that will prejudice the investment during the period needed to generate a viable return," explained Ms Vivier.

## Mining Investment Lifecycle



Source: Visual Capitalist: Visualising the lifecycle of a mineral discovery; Minerals Council South Africa: Mining asset lifecycle

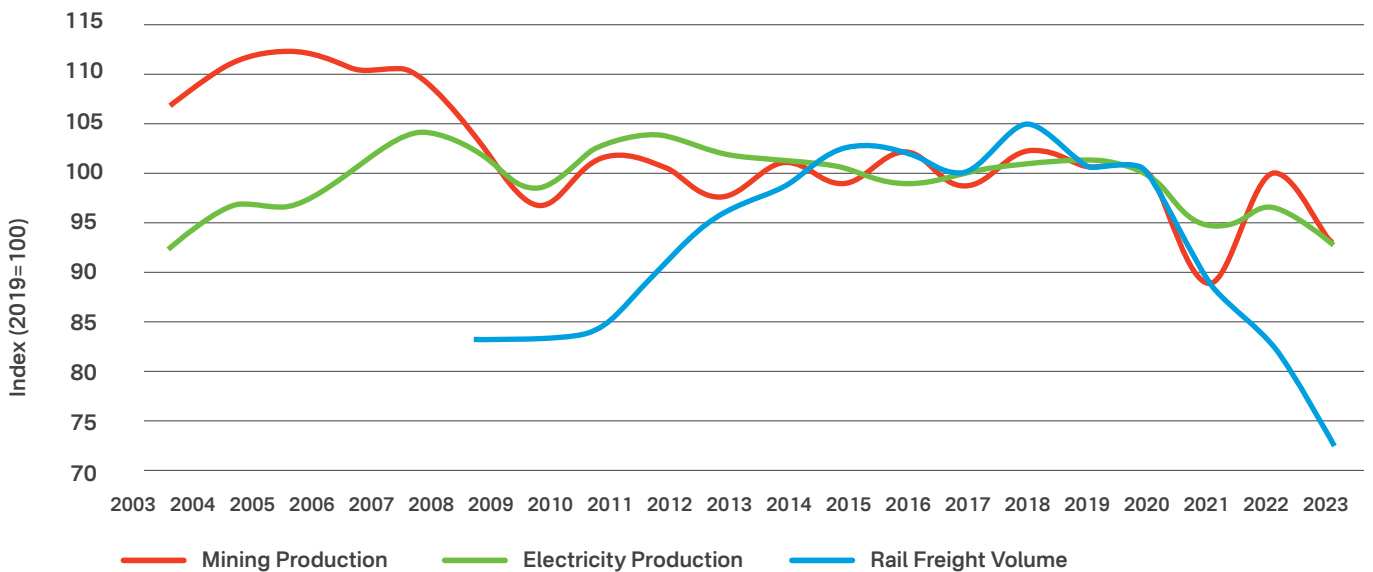
While policy uncertainty has been a key factor affecting new investment, South Africa's mining industry has equally been unable to take full advantage of heightened demand and firmer global commodity prices due to a wider set of domestic infrastructure issues that have hampered production and

distribution. "One can't isolate the Charter as the sole cause of the mining industry's challenges and performance," said Tebello Chabana, Senior Executive Public Affairs and Transformation at MCSA.



## Infrastructure woes

Mining production vs. infrastructure availability (2003-2022)



Source: Statistics South Africa

Failing network infrastructure, such as ports, rail and electricity generation linked to poor public administration— national, local and provincial —are among the factors highlighted by the MCSA impacting the industry. To be sure, policy certainty in and of itself is insufficient to crowd-in investment. "You need to have a competitive environment. Jurisdictions that have efficient public administration, rule of law and predictable and stable policy regimes are best placed to attract investment," added Mr Chabana.

The mining industry cannot, however, rest on its laurels and merely wait for a suitable regulatory landscape to be created. It is in the nature of regulated industries that face government intervention that stakeholders and government hold different

views as to how the industry should be regulated (from a policy perspective as well insofar as legislative interventions are concerned).

The mining industry has an opportunity to grasp the nettle, so to speak, and implement strategies that align with the prevailing policy landscape and reflect their desired objectives and targets, especially where these are unclear under the Charter. In this way an effective ESG strategy can be used as a tool to illustrate to government how broader public interest objectives can be achieved and measured leading to more sustainable outcomes in the mining industry. Of course, always bearing in mind that these strategies should encapsulate compliance with enforceable legal obligations.

# ESG and Charter alignment

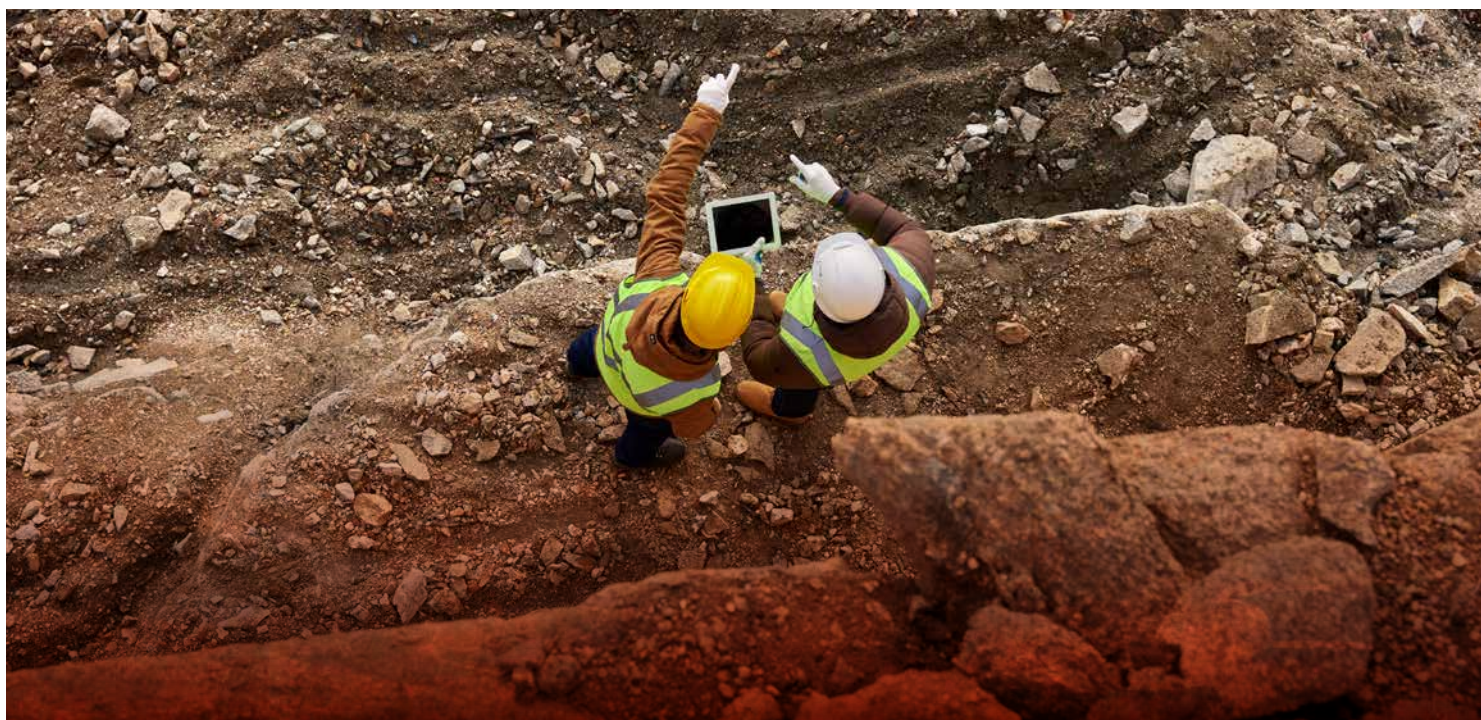
## ESG - A SHIFT OF MINDSET

ESG has emerged as an important corporate imperative as companies grapple with their individual responsibility to ensure that their operations are not only financially sustainable but also, broadly speaking, socially sustainable.

ESG necessitates that companies ensure that their operations are undertaken and governed in a manner that generates socially and environmentally desirable outcomes, not only those required for legal and regulatory compliance. It may seem overly burdensome to commit to objectives that

go beyond legal compliance, but by moving away from a focus only on compliance, companies can explore non-traditional strategies and additional opportunities to drive sustainable growth: financially, operationally and from an ESG perspective.

"It can't be about numbers only. It must be about impact. I, like many of Implats' managers and executives today, am a product of investment in the potential of mining communities," explained Dr Tsakani Mthombeni, Executive: Sustainable Development at Implats.

















## SUPERCHARGING THE "S"- THE CHARTER, ESG & IDENTIFYING OPPORTUNITIES

In the South African context, public interest considerations have for a long time formed part of the commercial and compliance landscape. Especially, but not exclusively, regulated industries have had at least some requirements imposed on them to ensure that such outcomes are achieved.

Before the mainstreaming of ESG, the Charter espoused principles of social responsibility and inclusivity. Its emphasis on ownership, community engagement and socioeconomic

transformation is noteworthy in enabling the "S" in ESG. "The Charter was instrumental in driving transformation in South Africa. It was ahead of its time. If you look at where South Africa is in many respects on the 'S' component of ESG, we are ahead of a lot of other countries," said Mr Chabana.

Despite the challenges and areas of deficiency, the Charter provides a useful framework to achieve worthy socioeconomic objectives aligned to ESG within a unique South African context.

	ESG elements	Charter elements	Charter lessons
Environmental	Impact on land, water, climate, flora and fauna	Environmental elements not directly included in latest Charter	Leverage community development projects in water, sanitation and energy to achieve environmental outcomes
	Impact on communities dependent on these resources	Community development and housing and living conditions have an indirect impact on environmental outcomes	Partner with agricultural sector to develop land and water sustainability solutions
UN Sustainable Development Goals	   		
Social	Equality	Address historical inequalities and meaningful economic participation through ownership transformation, skills development and employment equity targets	Incorporate transformation and employment equity objectives included in the Charter into a broader ESG strategy to address inequalities
	Impact on local communities	Positive community impact through community development and engagement	Leverage local procurement and skills development targets in the Charter to support mining and beyond-mining livelihoods and diversify local economies
	Sustainable economic development	Sustainable economic development through local procurement, skills development and local beneficiation	Explore synergies with agriculture to maintain the land and share infrastructure
	Human rights	Dignity and human rights through improved housing and living conditions	Leverage partnerships with local municipalities to develop infrastructure
UN Sustainable Development Goals	       		
Governance	Transparency and accountability	Community and local stakeholder engagement	Incorporate broader ESG requirements into stakeholder engagements
	Stakeholder participation	Regular reporting on progress and compliance	Agree on common metrics across ESG and Charter to track and report on
UN Sustainable Development Goals	 		

Source: Adapted from *Mapping Mining to the Sustainable Development Goals: An Atlas*

# Closing thoughts

The mining industry is a fundamental segment of South Africa's economy and intertwined with its past, present and future. The Charter serves as an important instrument to drive this critical sector's transformation and in so doing contribute positively to a broad set of socioeconomic ideals and objectives particularly in areas where mines are located. Over the last two decades, in this regard, progress has evidently been made. While the Charter as a policy may be viewed as aspirational, the mining industry desires "certainty". A review of how the Charter's aims and targets align to and are fit for purpose relative to industry role players and associated activities is warranted to achieve this certainty and support the mining industry in meeting these objectives. Clearly a standard of reporting and feedback against Charter metrics would go a long way in resolving points of debate and contention between stakeholders with regard to compliance and progress.

The Charter was never reasonably intended as a silver bullet to erase the industry's Apartheid legacy. Recognising the industry's relative contribution to GDP, more can and must be done by stakeholders within and outside of the industry

*"South Africa actually is the best country to mine. But why does it have to be so difficult?"*

*CEO, global precious metals company*

to drive the transformation, growth and development agenda. Improvements in public sector administration, in areas such as the licensing process time, as well as maintaining and upgrading critical state-run infrastructure, would materially unlock industry growth and development without any Charter amendments.

Nonetheless, the Charter's role in fostering transformation and embracing ESG principles positions it as a valuable guide to those seeking to overcome related challenges and striving for sustainable growth and development.





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