

South Africa's Mining Charter must strike balance in its ESG alignment

As the Mining Indaba approaches, Johannesburg-based legal firm Alchemy Law has released a white paper that provides insight into the Mining Charter, a key yet sometimes controversial tool in the complex transformation journey of the mining industry. The Charter's role in promoting Black ownership and social responsibility is clear, but doubts remain about its effect on the overall performance of the industry and its alignment with the broader Environmental, Social and Governance (ESG) movement.



"The Mining Charter's potential as an instrument to guide ESG and growth is undeniable, but it needs recalibration and effort," says Alchemy Law partner Morné van der Merwe

The paper, [*Transformative Pathways in South Africa's Mining Sector: Chartering an ESG-Aligned Era*](#), examines the Charter's achievements and failures. It recognises the substantial progress made in Black ownership, which has risen from 2% to 39% since 2004. However, it also draws attention to concerns about inconsistent compliance and the need for more widespread participation at all levels.

The Charter's influence goes beyond simple ownership. Its focus on community investment and engagement, as well as socio-economic development, aligns with the growing importance of ESG principles, particularly the social pillar.



Mining Indaba sustainability series to discuss energy transition and justice

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"The Charter deserves recognition for putting South Africa at the forefront of the social aspect," comments partner Fani Dingiswayo.

"Building on this solid base and aligning Charter objectives with wider ESG goals can unlock even greater benefits, such as ensuring that mining not only extracts for the life of the mine, but also becomes a unique opportunity to build a sustainable economic legacy in host communities," he adds.

Pushback

However, the Charter is not without its detractors. Industry stakeholders highlight policy uncertainty resulting from frequent revisions as a significant barrier to investment. This instability, exacerbated by wider challenges such as inefficient public administration and inadequate infrastructure, has significantly hindered industry growth and exploration, despite a worldwide increase in commodity prices.

Frequent Charter revisions cast a long shadow of uncertainty, deterring critical investment. Alchemy Law partner Morné van der Merwe explains: "Mining thrives on stability. These revisions are like seismic tremors for project timelines. Mining is a long-horizon activity, and changing the rules of the game midstream throws a spanner in the works."

"These regulatory and policy challenges are faced by many regulated industries, not only the mining industry," explains Van der Merwe's colleague Leana Engelbrecht.

"The South African government has adopted a multi-faceted approach to expedite economic transformation, growth and to realise broader public interest benefits through industry specific regulatory interventions and more general mechanisms, such as the mandate of the competition authorities to ensure that public interest benefits that go beyond economic transformation are achieved when, for example, assessing merger transactions."

Is the Mining Charter a catalyst for transformation or a stumbling block to industry growth?

The paper advocates for a balanced approach to industry growth, emphasising the need for systemic improvements and the adoption of broader ESG principles. It acknowledges the Charter's contributions and the unique South African context.

Alchemy Law partner Wildu du Plessis stresses the importance of ESG and inclusivity practices in the mining industry worldwide. "Their incorporation in all aspects and at all levels of the industry sector is critical and also need to be addressed in the financing of any activity or project. They simply cannot be ignored by any participant."

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