Critical analysis of Preferential Procurement in the

Mining Industry

Graduate School of Business Leadership
University of South Africa

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MASTERS DEGREE IN BUSINESS LEADERSHIP,
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By
NATALIE C. GÜNTER
Acknowledgements

I would like to dedicate this thesis to my family, Papa, Mom, Dave, Ben, Jonathan, Anélle and Ethan for believing in me and supporting me through my studies, without all of you this research would not have been possible.

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Mr. Herman Kirstein from the South African Mining Preferential Procurement Forum (SAMPPF), thank you for all your advice and topic selection.

I certify that this research is my own work and that all references used are accurately reported.

Yours faithfully

Natalie Claire Günter
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CHAPTER 1: ORIENTATION

1.1 Introduction

Since the inception of South Africa’s democracy in 1994, the Government has formulated and implemented numerous policies and laws to address the issues of inequality and to assist in the redistribution of wealth to the largest portion of South Africa’s populous.

There have been significant successes since 1994 but there are still traces of social, racial and gender inequalities not to mention severe poverty. This is detrimental to South Africa’s long-term growth and will hinder the transformation process (Booysen, 2005).

A study conducted by Hofmeyr in 2004 states that white people still hold 93% of top position, a 2% reduction than the 95% in 2002 (Booysen, 2005).

To assist in the transformation process South Africa’s Government adopted a Broad Based Black Economic Empowerment (BBBEE) Strategy and promulgated legislation the Broad-based Black Economic Empowerment Act 53 in 2003. The strategy and Act aims to outline roles of all stakeholders in BBBEE, promote transformation charters in various sectors and to ensure that Government to utilise it leverage in implementing BBEEE. The act serves to be enabling rather than prescriptive with establishment of the BEE advisory council, the release of Codes of Good Practise and gazetting the transformation Charters.
The Codes of Good Practise are binding on the public sector as it interacts with the private sector. The Codes aim to be used as a guideline for all businesses that currently do not have an Industry Charter. This has led to confusion as the Codes are only in the stage of its second draft and once Government has finalised this, will there be clarity.

Corporate South Africa has accepted Black Empowerment as both economically and socially necessary.

According to Sethi (1989) “it is also true that economic growth and prosperity provide people with increased resources with which to fight for their political rights and freedom”. This has mainly been achieved by the implementation of Black Economic Empowerment, but to certain industries at varying levels.

Since black people in South Africa represent almost 75 per cent of the total population, it would mean that they should also account for 75 per cent of the country’s wealth and disposable income. This has not yet been achieved.

In 1997, the Government established a commission (Black Economic Empowerment Commission) to investigate growing concerns about the pace and results of existing BEE initiatives. The BEECOM report showed that for BEE to be successful it is imperative that the implementation be a state-driven programme. Furthermore the BEECOM should create a co-ordinated, simplified and streamlined set of guidelines and regulations to provide targets and demarcate
roles and obligations of the private sector, and the public sector and civil society over a period of ten years (Banda, Herzenberg and Paramoer, 2003).

The BEECom adopted a definition of BEE as an integrated and coherent socio-economic process, that is located within the context of South Africa’s national transformation programme namely the RDP (Redistribution and Development Programme) aimed at redressing the imbalances of the past, by transferring management and control of South Africa’s financial and economic resources to the majority of its citizens, ensuring that there is a broader and meaningful participation in the economy by black people in order to achieve sustainable development and prosperity in the future (Banda, Herzenberg and Paramoer, 2003).

The main shortcoming of the BEECOM preliminary report was that it returned the responsibility for a successful BEE strategy and implementation to the Government without making any proposals.

To answer the shortcoming identified above, Government embarked on the formulation of the Codes of Good Practise.

Some of the immense challenges facing meaningful Black Economic Empowerment have been identified as grossly undereducated black populous (Sasol Limited, 1993:31), scarcity of black capital resources (Levin, 1994:3; Nyati, 1993:85), a lack of adequate managerial, technical and administrative skills among some managers (Riley, 1993:62) and finally that major corporations in
South Africa are controlled by Whites who are generally perceived to be unwilling to relinquish power voluntarily (Mbatha, 1993:57).

Baloyi (1994:2) maintains that the most appropriate definition for economic empowerment is a “strategic investment aimed at enhancing economic performance and sustained profitability through the provisions of opportunity and the development of skills and resources”.

According to Baloyi (1994:2), economic empowerment is based on four cornerstones: firstly education and development of all our countries’ people secondly encourage employee participation, thirdly affirmative action in all large organisations and lastly further investment in business development.

Preferential procurement is one of the cornerstones to assist transformation in Black Economic Empowerment. One of the components on the Scorecard (this will be discussed in relevant chapters) is preferential procurement with a weighting of 20%. Procurement has become a much debated issue especially in the Mining Industry.

Preferential procurement is referred to as procuring all commodities that mining companies require from previously disadvantaged South Africans. A black company or joint venture partnership that is 50% owned plus one share, and managed by historically disadvantaged South Africans, while a black-empowered company or joint venture partnership is one that is at least more than 25% and up to 50% owned and managed by blacks.
The Mining industry is the foundation of this country, as it employs about 450,000 people directly and a further 15,000 indirectly in related industries, and it accounts for some 7% of GDP (Gross Domestic Production). A decade ago, South African mining companies that were constrained by financial and trade sanctions were mainly owned by South African shareholders. Currently about 76% of the industry’s market capitalisation is foreign-owned. This contribution has decreased from 13.3% in 1980 to a mere 7% in 2004. Export earnings fell from 61.3% in 1980 to 40% in 2004 (Rautenbach, 2005:20). The scale of the mining sector’s value is likely to be around R650 billion (Christianson, 2004:18).

According to an article written in the Finance Week “South Africa’s mining industry has completed at least a quarter of its required empowerment-related equity transfers – about R25 billion in transactions” (Mckay, 2004:19). This proves that empowerment is working in the mining industry, but that more can be done to transfer past inequalities, as currently only a mere 1% of total employees are female managers (Mckay, 2004:19).

Interestingly according to the Mining Charter which is contained in Section 100 of the promulgated Mineral and Petroleum Resources Development Act, previously disadvantaged South Africans excludes white females, but some mining companies have decided to include white females in their definition of historically disadvantaged South Africans (Mckay, 2004:19).

This research report will examine different mining companies’ Preferential Procurement policies, delving into their respective suppliers and what challenges
and opportunities they face with the introduction of the Codes of Good Practise and what the suppliers general attitude and understanding is of the Codes of Good Practise. Furthermore certain recommendations will be made for the final draft of the Codes.

This research report will focus on the following Mines that will be introduced in-depth in the preceding paragraphs: Anglo Platinum, Impala Platinum, BHP Billiton and Sasol. One company requested to remain anonymous and will for the duration of this research report will be referred to as Company A and the person interviewed as Respondent A.

1.2 Anglo Platinum

Anglo Platinum is the world’s largest primary producer of platinum and accounts for about 38% of the world’s newly mined production. Anglo American plc holds 74.9% of Anglo Platinum. Anglo Platinum’s primary listing is on the Johannesburg Securities Exchange with secondary listings on the London Stock Exchange and Brussels Bourse (IDR). Anglo Platinum operations include 7 mines, 3 smelters, a base metals refinery and a precious metals refinery. Currently their revised expansion programme will produce between 2.7 and 2.8 million ounces of refined platinum in 2006.

The Group consists of Anglo Platinum Management Services (Proprietary) Limited; Rustenburg Platinum Mines Limited (RPM); Potgietersrust Platinum
Limited (PPRust); Lebowa Platinum Mines Limited (Leplats) and all other subsidiaries. The Group is also in a joint venture with ARM Platinum, a historically disadvantaged South African (HDSA) Consortium that is responsible for numerous operations of various Mines.

Anglo Platinum created the Platinum Guild International (PGI) in 1975 and provides funding for its jewellery development efforts. The PGI has offices in Japan, Italy, Germany, UK, the USA, China and India.

During 2004 Anglo Platinum announced a significant performance improvement in comparison with 2003 as a result of increased production and sales volumes and higher rand prices realised. Earnings increased to R2.62 billion, a 25.1% increase from the previous year.

The Group has worked closely with the department of Minerals and Energy and has lodged several applications to convert “old-order” rights to “new-order” rights to comply with the requirements of the new Act.

Anglo bought goods and services worth R3.6 billion from black businesses in 2003, and during 2004 hoped to crack the R5 billion mark (Empowerment in Mining yearbook 2004, page 22).

Mr. Gary Ditchfield is currently the Historically Disadvantaged South African (HDSA) Procurement Manager for Anglo Platinum. Mr. Ditchfield has worked in this said position for two years and has been in Procurement since 1989. He has
extensive knowledge about this topic and was interviewed as one of the experts in this research report.

1.3 Impala Platinum (IMPLATS)

IMPLATS has four mining (mine-to-market) operations that include, Impala Platinum and Marula Platinum located on the Bushveld Complex in South Africa, and Zimplats and Mimosa Platinum on the Great Dyke in Zimbabwe. These operations including Impala Refining Services (IRS) employ approximately 31 600 people and produce 1.961 Moz attributable platinum ounces during the financial year 2004.

This research report will focus only on Impala Platinum. Impala Platinum is situated north of Rustenburg in the North West Province. Impala Platinum includes Mineral Processes, the group’s smelting and concentration plants located in Rustenburg, and the Refineries, which includes both the base and precious metals refineries in Springs, Gauteng.

Currently Impala Platinum mining operation produces around 1.0 to 1.1 Moz annually. It is essential for Impala Platinum to maintain this production level if their 30-year life-of-mine is to be realised. The mining operations cover an area of approximately 250 square kilometers and include 13 shaft systems and five declines.
Mr. Pierre Lourens holds the position is that of CEO of the Development Trust and at the time of this research, the Chairman of the South African Mining Preferential Procurement Forum (SAMPPF).

1.4 **BHP Billiton**

BHP Billiton is the world’s largest diversified resources company. The global headquarters are in Melbourne, Australia and other major offices are in London, Johannesburg and Houston. BHP Billiton has primary listings on the Australian and London Stock Exchange, with a secondary listing on the Johannesburg Stock Exchange and American Depositary Receipts listings on the New York Stock Exchange.

BHP was incorporated in 1885 and is a leading global natural resources company and one of Australia’s oldest and largest companies. Billiton established in 1860 is one of the world’s premier mining companies. The merger formed between BHP (Broken Hill Proprietary) and Billiton now has an exceptional mix of quality, low-cost resource assets, complemented by a strong management team. BHP Billiton has 35 000 employees working in more than 100 operations in approximately 20 countries. The Group turnover in 2004 was US$24.9 billion and market capitalisation was at US$89 billion.

BHP Billiton has very diversified product groups including, aluminium, base metals, carbon steel materials, diamonds and speciality products, energy coal,
petroleum and stainless steel materials. To support all these products BHP Billiton has created twin-marketing hubs in Singapore and The Hague.

Mr. Nick Saunders is the Regional Supply Manager for BHP Billiton Southern Africa. Mr. Calvin Fambisayi was present during the interview and had recently been appointed the BEE supply Manager for BHP Billiton Southern Africa.

1.5 Sasol

Sasol began in 1927 when a White Paper was tabled in Parliament to investigate the established of a South African oil-from-coal industry. Sasol has achieved many milestones including the first automotive fuel (1955), the construction of the National Petroleum Refiners of South Africa (1967) and the establishment of their first international marketing company in 1990, which paved the way for Sasol's globalisation programme. Sasol currently employs 30 000 people.

Sasol operational footprint extends to more than 20 countries and export to over 100 countries. Sasol is one of the top five publicly listed companies in South Africa and is quoted on the Johannesburg Stock Exchange (symbol SOL) and the New York Stock Exchange (symbol SSL). Sasol has almost 50 entities in The Americas, Austalasia, Europe and Africa.

Operating profit for 2005 was R 6547 million which is 65% higher than 2004.
Sasol stated that their BEE focus amongst other things that “procuring goods and services on a preferential basis, from historically disadvantaged South Africans”. Sasol has also stated that, due to their high technical requirements, empowerment companies do not supply many of the products they need.

Mrs. Schuman holds the title of BEE Procurement Programme Manager at Sasol.

1.6 Company A

Due to the sensitivity of this study, Company A preferred to remain anonymous. The researcher believed that this company was beneficial to the study and as it was one of South Africa’s largest and oldest companies for that reason it had to be included. For this reason no more information can be given about this company as it will disclose their identity. For the purposes of this paper this company will be referred to as Company A and the person interviewed as Respondent A.

1.7 Purpose of this research report

The purpose of this research report is to investigate all aspects of Preferential Procurement in the mining industry focusing on fronting and possible causes for certain local Department of Minerals and Energy (DME) not being forthcoming with assisting local mining companies in the development of the area that they
are mining in. Mining companies are forced to ensure that Black Economic Empowerment is achieved in their company. This has led to some concerns, confusion and hostility, yet conversely many companies have successfully complied with the new regulations.

Government has tried to shed some light on issues of Black Economic Empowerment and has released the Scorecard, and recently issued the first draft of the Codes of Good Practise. The Codes are still in the development phase and certain concerns have already been highlighted.

Some mining companies have asked their current suppliers to transform and become empowered companies; this research report will attempt to highlight some of the difficulties that the suppliers have had with this and to make certain recommendations.

Many mining companies have invested large sums of capital to ensure that companies comply and to ascertain that the right empowered company gets the tender contract. Due to the very technical specifications of some mining commodities, mining companies have difficulty finding empowered firms to provide their goods. This research report will attempt to investigate reasons for this.
This report will make recommendations on how these issues can be address to ensure sustainable empowerment for long term growth in this country.

1.8 Problem statement and sub-problems

South Africa has come a long way since the first democratic elections in 1994. With the implementation of the Mining Charter in May 2004, mining companies have had to adopt the new charter to ensure that mining licences would be granted (Rocha, 2004). To facilitate this procedure the Government introduced the Balanced Scorecard, which outlines seven criteria that a mining house should strive to achieve in order to be classified as a black empowered company. These are: employee equity (10%), skills development (20%), preferential procurement (20%), enterprise development (10%) and residual element (10%). Refer to the discussion on page 49.

The Government gazetted the Preferential Procurement Policy Framework Act, which was signed on 2 February 2000. Not only have companies been forced to comply but also in turn these companies have “forced” their respective suppliers to transform into Black Economic Empowerment firms. Some companies have found this easy but the smaller family owned companies or small and medium enterprises have found this challenging, knowing that if they do not comply they will not be allowed to tender for new projects.
The central issues were phrased as a series of propositions around which the research has been centred. The research propositions are as follows:

- Mining companies are eager to assist in the transformation process and have undertaking large projects with Historically Disadvantaged South Africans (HDSA) as referred to as Previously Disadvantaged Individuals (PDI) or Historically Disadvantaged Individuals (HDI) to ensure that their procurement targets are met.
- Fronting is still a problem in the mining industry and mining companies have taken very serious steps to ensure that this phenomenon is eradicated.
- HDSA suppliers to the mining companies do not understand what the Codes of Good Practice will achieve once they are gazetted.
- Mining companies are reluctant to disclose their real current and past BEE spend as this will set a high benchmark for the preceding years.
- At certain local levels, the Department of Minerals and Energy (DME) are less helpful in establishing partnerships with the mining companies in that area.

Obtaining answers to these questions will provide some insight into this debated topic.
1.9 Definitions

Black Economic Empowerment: Black economic empowerment is an integrated and coherent socio-economic process located within the context of South Africa’s national transformation programme namely the RDP (Redistribution and Development Programme). It is aimed at redressing the imbalances of the past by transferring the management and control of South Africa’s financial and economic resources to the majority of its citizens. It thereby ensures that there is a broader and more meaningful participation in the economy by black people, which achieves the aim of sustainable development and prosperity in the future (Banda, Herzenberg and Paramoer, 2003).

Preferential Procurement: Preferential Procurement is described as the acquisition of all commodities from previously disadvantaged South Africans. A black company or joint venture partnership is 50% plus 1 share owned and managed by historically disadvantaged South Africans, while a black-empowered company or joint venture partnership has a minimum of 25% and a maximum of 50% black ownership and management.

Codes of Good Practice: The purpose of the Codes of Good Conduct is to assist and advise the public and private sectors in their implementation of the Broad-based Black Economic Empowerment (Broad-based BEE) Act. The Codes of Good Practice provide principles and guidelines that will facilitate and accelerate the implementation of broad-based BEE in a meaningful and sustainable manner.
1.10 Delimitations of the study

A limitation of this study was the time constraint that only provided opportunity for five large mining companies in South Africa to be studied. This could not possibly be representative of the issues pertaining to this sector as only a total of five managers were be interviewed. Because managers and suppliers of each mining company were interviewed, two different interview schedules had to be formulated. The reasoning behind this is explained in the design methodology.

Content analysis was used to analyse the data provided by the interviews. The benefits and limitations of content analysis are shown below:

Table 1: Summary of benefits and limitations of Content Analysis

<table>
<thead>
<tr>
<th>BENEFITS</th>
<th>LIMITATIONS</th>
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<tr>
<td>• Flexibility of research design</td>
<td>• Analyses the message only</td>
</tr>
<tr>
<td>• Supplements multi-method analyses</td>
<td>• Findings may be questionable alone, therefore verification using another method may be required</td>
</tr>
<tr>
<td>• Wide variety of analytical application</td>
<td>• Underlying premise must be frequency related.</td>
</tr>
<tr>
<td>• May be qualitative / quantitative</td>
<td>• Reliability – stability, reproducibility, accuracy of judges.</td>
</tr>
<tr>
<td>• Improves reliability, reduces cost</td>
<td>• Validity – construct, hypothesis,</td>
</tr>
<tr>
<td>and time</td>
<td>predictive and semantic.</td>
</tr>
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<td>--------------------------</td>
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<tr>
<td>- Range of computer software developed.</td>
<td>- Less opportunity to pre-test.</td>
</tr>
<tr>
<td>- Copes with large quantities of data.</td>
<td>- Undue bias if only part data is analysed</td>
</tr>
<tr>
<td>- Unobtrusive, unstructured and context sensitive.</td>
<td>- Lack of reliability and validity measures reported.</td>
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<tr>
<td>- Development of standards applicable to specific research.</td>
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Source: Harwood and Garry, 2003: 493

From this table it is clear that there are many benefits and limitations to content analysis. The limitations have been taken into account and the researcher was mindful of these limitations during the research process.

1.11. Importance of the study

Since 1994, the South African Government has implemented various Charters and Acts and the draft proposals of the Codes of Good Practice to ensure that sustainable development is achieved. The relevance of this study is to highlight possible areas of concern in preferential procurement and to identify ways of ensuring that these concerns are addressed and eradicated. Certain issues, like fronting, have been identified and although the utmost care has been taken to
ensure that this unfortunate phenomenon is kept to a minimum, it still occurs in businesses on a daily basis.

With the inception of the Mining Charter in 2004 and the release of the first draft of the Codes of Good Practice, differences have been highlighted and these differences could lead to misunderstandings. This report will propose possible recommendations for the final draft.

Chapter 2 will identify and analyse the literature on this topic. Chapter 3 will focus on the foundation and methodology of the study. Chapter 4 will show the qualitative findings of this research and Chapter 5 will put forward the recommendations and conclusions of this research.
CHAPTER 2: OVERVIEW OF LITERATURE ON BLACK ECONOMIC EMPOWERMENT AND PREFERENTIAL PROCUREMENT

2.1 Introduction

Preferential Procurement is an integral part of Black Economic Empowerment and thus incorporated literature on the latter to emphasise this thought. The concepts that form part of Black Economic Empowerment namely, Preferential Procurement and the subsequent Codes of Good Practice’s literature were reviewed to ascertain what has been found in theory. The subsequent paragraphs will identify and argue the researcher views and opinions.

Sanlam CEO Mr. Johan van Zyl stated recently “The aim of empowerment is to correct some of the distortions of the past and it therefore stretches over all spheres – from buying and investment to personnel and social investment. All these elements are important for the successful implementation of empowerment” (Finance Week 20 October 2004:15). This shows that buying or Preferential Procurement is an important part of empowerment.

BEE has been criticised for giving preference to black empowered companies associated with individuals who appear to have the appropriate political connections instead of individuals who had the necessary experience and capacity to add value in the direct operations of the target company (Business Map, 1999:14).
Orford and Wood (2003) wrote the following, which reiterates one of the problems, according to the researcher, black economic empowerment faces. “The programme has three significant challenges; firstly raising the opportunity based participation of blacks in owner-operated new businesses, secondly increasing the survival rate of black-owned start-ups and lastly expanding the growth potential of black-owned new businesses”.

Through the Preferential Procurement category on the Scorecard it ensures that previously disadvantaged South Africans have the opportunity to now tender and obtain contracts. Black owned companies are increasingly expanding with their growth and have a higher survival rate then the last 5 years.

The literature indicates that empowerment means to give increased power and authority, and corresponding responsibilities and competencies to employees (Klagge, 1998:550).

Koolen (2004) writes: “Most interesting, in the time it takes to go from concept to transaction, there is a convenient switch from Black Economic Empowerment to Business Economic Empowerment. There is no clear evidence that identifies changes in relative performance by newly empowered companies compared to non-empowered companies.

Koolen (2004) also states that there is immense pressure on South Africa to reflect the majority of her population and that in turn creates a skewed market at
times, because the skills and experience of the broader population are not generally the same as those of the narrow segment.

According to Ritchken (2003), the Government is using its position to regulate certain sectors of the economy, for example the granting of mining licences, and its position as a customer in other sectors to redistribute opportunities towards those companies which provide both commercial and empowerment value in the delivery of their product or service. However, he states further that many empowerment deals have not resulted in a redistribution of wealth towards an empowerment group, but in a redistribution of shareholding, that benefits the financiers.

Ritchken (2003) also claims that precious metal mining companies are looking for partners who, at the very least, can facilitate access to licences. Therefore, it is not surprising that mining companies would seek out small, elite groups of highly influential business people as potential partners. The challenge for the private sector, as charters are rolled out, is to encourage their suppliers to enter into partnerships with commercially orientated, as opposed to politically connected, entrepreneurs.
2.2 **Black Economic Empowerment: The History**

Government realised that procurement policies could be utilized as a powerful mechanism to promote the development of small and medium enterprises (SME) and broader aspects of the Reconstruction and Development Programme. The department of Public Works Emerging Contractor Development Programme was active in defining and implementing specific plans to procure services from black entrepreneurs. Eighteen tender advice centres were opened through Ntsika Enterprise Promotion Agency, which in 1999 facilitated business connections worth R130 million between Government and 300 black suppliers. New tender boards were created and a new centralized system is in the process of being created ANC (2001).

2.3 **Current Perceptions of Black Economic Empowerment**

In 1993, Innes wrote that, “Often organizations have put blacks into token positions, using them simply as window-dressing to meet their legal requirements rather than empowering them within the organization”. Furthermore, he writes that affirmative action policies involve a two-stage strategy. The first stage uses legal quotas to force organizations to employ and promote blacks, and then after blacks have gained a foothold in the organization, they can work at empowering themselves.
Sethi (1989) states that corporate leaders are making effort to promote black executives and technical personnel, including bursaries and scholarships to encourage more blacks to pursue their education. A study done by the Department of Education showed that in the past ten years the number of black students in tertiary education has doubled. In 2004 more than 50% of tertiary qualifications went to black students (Right BEE mix, 25 May 2005: 6).

Kirwan (1995) states that there are four key ingredients for an empowerment program to succeed; top management must agree to support the program, that the program inauguration warrants fanfare, rewards must be offered for ideas generated and accepted and finally that training is essential for team leaders, program coordinators and evaluation committee members.

According to Alberts, Coetzee, Coleman, Eloff, Marsden and Payne (1994:1) in order for real restructuring of ownership to be achieved, the commitment of three key role players are required namely the Government, Labour and Business. Furthermore the authors propose two particular options, or models, that have the specific objectives of broadening equity ownership by black South Africans namely the Community Growth Fund Model (CFG) and the Employee Share Option Schemes (ESOPS).

The Community Growth Fund model is a unit trust that was launched by the trade unions in June 1992 and it directs members’ retirement fund savings into “socially responsible” companies. The funds of seven trade unions are currently invested through the CGF, one of which is the National Union of Mineworkers.
In a study conducted by Van Gass in 2005 it is evident that there is a shift in attitude occurring in business. In 2000, 57% of whites and 70% of blacks agreed, “blacks are as competent as whites”. By 2004, these figures had increased to 73% of whites and 85% of blacks in agreement (Booysen, 2005). From this study, it is clear that there has been an increase in understanding and respect for all cultures in the workplace.

According to the South African Communist Party (SACP), the failure to link Black Economic Empowerment Charters and the Growth and Development Strategy will result in charters operating parallel to, and even in contradiction with, any growth and development strategy (Banda, Herzenberg and Paramoer, 2003).

The Congress of South African Trade Unions (COSATU) has expressed concerns that while black economic empowerment is broadly defined, proposed measures often tend to focus on increasing black ownership amongst a few wealthy individuals, rather than on a broad empowerment process (Banda, Herzenberg and Paramoer, 2003).

In a recent report, the International Monetary Fund (IMF) expressed some concern about South Africa’s BEE policy, saying that there were insufficient safeguards against empowerment that would benefit a small elite of black entrepreneurs rather than the greater society.
“The Chamber of Mines has come out strongly against any possible gold sales by the International Monetary Fund (IMF), warning of up to 76 000 possible job losses at SA Mines” (Lünsche, 2005: 14).

Chamber of Mines did a study that showed that a 10% drop in the rand gold price would result in a 35% loss in existing production (Finance Week 8 April 2005:14). This is a serious problem for mining companies, as they do not control the price of the rand-dollar exchange rates. The Government could consider possible ways of reducing this risk.

Sethi (1989) wrote, “A redistribution of income must accompany, if not actually precede, a gradual redistribution of transfer of wealth” The Government implemented the Mining Charter in October 2002 to ensure that mining companies adhere to the Black Economic Empowerment Strategy, if they do not comply any application for mining licenses will be denied.

Old Mutual commissioned a survey that demonstrated that 69% of small to medium sized enterprises in South Africa see back economic empowerment as a business opportunity; on the other hand, 65% of small to medium enterprises do not intend to implement a BEE programme. A further result showed that 44% of the respondents expected to be fined for non-compliance. Only 10% believed that their businesses would stagnate if they did not comply. The perceptions and attitudes of small to medium enterprises need to change from being in business for their own personal gain to growing a healthy economy in which all South Africans can thrive (Diederichs, 2005).
Many of the big empowerment companies in South Africa still adhere to old-style corporate models that would affect the overall performance of real empowerment (Mason 2004).

BusinessMap analysed the top 200 companies on the JSE (Johannesburg Stock Exchange) to investigate overall ownership structure of the JSE. The findings were “black ownership was estimated as 12.36% to 14.57% overall at the end of September 2002. The analysis of the 200 companies showed that 68% of the market capitalisation of the JSE should be targeted for BEE purposes, as the remaining proportion of foreign owners can make no difference to the BEE outcome in respect to the JSE” (Rautenbach, 2005:16).

The share of 15.5% of the JSE is held by formal employees with permanent and direct employment. There was a period where the black population increased by 18.5% therefore exceeding the growth of formal employment by approximately by 100% (Rautenbach, 2005:29).

Rautenbach states “one ineluctable conclusion that follows from these facts, is that since the advent of democracy in 1994, the broad-based economic empowerment of ordinary black South Africans has degenerated” (Rautenbach, 2005:36).
2. 4 Black and White women in South African business

For the last decade women, both black and white have been in a position of being doubled disadvantaged. Due to changes occurring on a daily basis in the South African business environment black women are now in a position of double or triple advantage, while it is turning into a double disadvantage for white women (Booysen, 2005).

Iheduru has quoted Monama as saying that Government-owned corporations’ R40 billion and R60 billion procurement contracts per year must also be awarded to those contractors with similar preference for black women businesses (Iheduru, 2003: 483).

Women, whether black or white, have been disadvantaged in the past and the BBBEE aims to address this issue, but there is a discrepancy in the definition of historically disadvantaged South Africans that will be explored later along with the implications this might have on empowerment.

Empowerment has numerous advantages as well as disadvantages and these will be discussed in the next section.
2.5 Advantages and Disadvantages of Empowerment

Numerous authors have written articles about the advantages and disadvantages of empowerment at an organisational and employee level. The researcher formulated the following table. All referencing is included in the table.

Table 2: Organisational and Employee benefits and negatives of Empowerment

<table>
<thead>
<tr>
<th>ORGANISATIONAL ADVANTAGES</th>
<th>EMPLOYEE ADVANTAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strategic guidance from the level of the work unit (Kappelman</td>
<td>Improved motivation (Kappelman and Prybutok, 1995:2)</td>
</tr>
<tr>
<td>and Prybutok, 1995:2)</td>
<td></td>
</tr>
<tr>
<td>Strategic implementation at the level of work unit (Kappelman</td>
<td>Increased personal strengths (Dodd and Gutierrez, 1990:72</td>
</tr>
<tr>
<td>and Prybutok, 1995:2)</td>
<td></td>
</tr>
<tr>
<td>Increased work unit efficiency (Shearer and Fagin, 1994:39)</td>
<td>Added accountability (Shearer and Fagin, 1994:39)</td>
</tr>
<tr>
<td>Increased customer focus on the line level (Dodd and Gutierrez,</td>
<td>Increased personal power and sense of self-efficacy (Dodd</td>
</tr>
<tr>
<td>1990)</td>
<td>and Gutierrez, 1990)</td>
</tr>
<tr>
<td>Increased emphasis on problem solving and prevention (Crawford,</td>
<td>Increased abilities to achieve full personal potential</td>
</tr>
<tr>
<td>Increased respect and trust among work units</td>
<td>N/A</td>
</tr>
</tbody>
</table>
(Crawford, 1995:80)

<table>
<thead>
<tr>
<th>ORGANISATIONAL DISADVANTAGES</th>
<th>MANAGERIAL DISADVANTAGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requires significant effort to implement the needed organizational changes (Ransom, 1994:325)</td>
<td>Fear of loss of control (Capozzoli, 1995:26); Changed balance of power in the manager/employee relationship (Patterson, 1995:46);</td>
</tr>
<tr>
<td>Requires substantial investment in training which may or may not pay off (Kappelman and Prybutok, 1995:15)</td>
<td>Downsizing through the elimination of middle management positions (Ransom, 1994:321);</td>
</tr>
<tr>
<td>Requires the organization to provide new competencies to all members, managers and employees alike (Staples, 1990:30).</td>
<td>Dramatic change from the familiar compliance model of management (Ransom, 1994:323).</td>
</tr>
</tbody>
</table>

Source: Compiled from various sources

From the table it is evident that empowerment has both benefits and shortcomings. The benefits that the organisation and the employee stand to gain are significant. If the culture of the organisation is adapted and the employees are
made aware of the benefits of empowerment, there would be less resistance. Education can be as powerful as empowerment. One factor that should not be overlooked is the fact that in South Africa’s history one person’s gain is another person’s loss; this relates to empowerment. A clear understanding of the benefits is crucial to a positive future in South Africa. The benefits far outweigh the shortcomings and empowerment is imperative for future growth and sustainability in South Africa.

2.6 Black economic empowerment Commission’s (BEECOM) definition of Preferential Procurement

Preferential procurement is also called Affirmative procurement or Targeted procurement. The BEECOM proposes setting a time limit of 10 years and that the following targets should be achieved in an incremental manner, which is measurable and annually reviewed as stated in the ANC BEE policy statement for all industries in South Africa (2001):

- At least 50% of state-owned enterprises (SOE) and Government procurement – national, provincial and local levels these companies should be black-owned SME’s.
- At least 30% of private sector procurement (for companies with more than 50 employees) should be black owned companies including SME’s and collective enterprise.
• At least 30% of long term contracts and concessions within the public sector should incorporate black-owned companies and collective enterprises up front.

• At least 40% of Government incentives to the private sector should go to black companies.

2.7 Broad Based Black Economic Empowerment (BBBEE)

Broad Based Black Economic Empowerment (BBBEE) Act No 53 of 2003 came into effect on 21 April 2004. The Code defines “black people” as “Africans, Coloureds and Indians but limits the term to South African citizens. The three core components of BBBEE scorecard contained in the Codes are:

I. Direct empowerment (encompassing ownership and management indicators);

II. Human Resource Development (encompassing employment equity and skills development indicators) and

III. Indirect empowerment (encompassing preferential procurement, enterprise development and residual elements indicators).

Broad based black economic empowerment is described as the broadening of the beneficiary base to include all black investors, management, employees, supplies and communities.
It is important to note that white women and disabled white women are not included in the definition of historically disadvantaged South Africans, according to BBBEE Act (Singh, Jekwa, Ryan & Southey, 2005: 20).

The BBBEE Act was incorporated after the Mining Charter being gazetted in October 2002, and is the only charter to date that has been legislated.

2.8 Mining Charter

The Mining Charter was approved by Cabinet in 2002. The vision of the Charter is to develop South African’s mining industry into a globally competitive industry that benefits all South Africans. The stated goal is to achieve 26% ownership of mining companies by HDSA within ten years. As stated in the Codes of Good Practice it is essential for companies to use the Generic Scorecard as shown in the next paragraphs. This will ensure that harmony exists between charters and that deviations are fully justified.

The Scorecard shown in the Charter set specific targets for the participation of HDSA, at board and management level, in all mining operations within a ten-year period.

Mitchell (2004) states that the danger with the Mining Charter is that it might harm the exploration sector that could result in foreign disinvestments. This sector is vital for long-term viability, but he does claim in the same article that the Charter
has stimulated black economic empowerment significantly within the mining industry.

In a recent article in the Financial Mail, the DME director-general Sandile Nogxina has been quoted as saying that he “acknowledges the difficulties in getting prospecting permits and new order mining rights in South Africa and says he has heard of foreign exploration companies leaving South Africa for greener shores” (Ryan, 2005b:62)

The chief executive of the Chamber of Mines stated that the mining industry, the Department of Minerals and Energy (DME) and the department of Trade and Industry (DTI) had reached an agreement that the Mining Charter would take precedence over the Codes when companies applied for mining rights conversions. These conversions must be done before 2009 or they will be lost to Government (Smith, 2005).

Companies that have invested a considerable amount of money in South Africa will either loose patience with Government’s legislations around mining and either leave South Africa or opt for legal action. In October 2004 more than 3000 holders of mineral and mining rights, including Impala Platinum gave notice of their intention to sue Government under the Institution of Legal Proceedings Action against Certain Organs of State Act. These companies were asserting their legal right to sue but did not intend doing so, provided their mining rights are converted. The latest threat is that South Africa’s mining dispensation could be hauled into the international legal arena (Ryan, 2005b:62).
Differences highlighted between the Codes and the Charter is shown in the next table:

Table 3: Differences between Codes and Charter

<table>
<thead>
<tr>
<th>Codes</th>
<th>Charter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Skills development as 3% investment</td>
<td>“Has the company offered every employee the opportunity to be literate and numerate by 2005 and are employees being trained?”</td>
</tr>
<tr>
<td>Employment target for women at 50%</td>
<td>Aims for 10% participation of women in mining by 2007</td>
</tr>
<tr>
<td>Seeks to ensure that fronting does not happen by requiring suppliers to meet a range of empowerment criteria (Singh, et al., 2005:20)</td>
<td>Procure goods and services from black-owned or empowerment firms (Singh, et al., 2005:20)</td>
</tr>
</tbody>
</table>

Source: Adapted from the Chamber of Mines

In the points above it is quiet clear that the Codes are far more precise about the requirements set out for mining companies, and that any possible misunderstandings could be avoided. Unfortunately, it has been confirmed by dignitaries that the Charter would take precedence. Government should consider ensuring that in future mining companies know exactly what is expected of them and that the Charter is more specific with targets to meet.
Preferential procurement or Affirmative Procurement is a potent way of promoting broad-based empowerment. Small companies feel especially burdened because they are expected to meet black economic empowerment criteria. In a recent article the following statement was quoted, “why should large companies that are subject to Charters, have 5 to 10 years to comply while smaller companies are expected to deliver immediately”. The answer from Government is that smaller companies can transform faster because the numbers are smaller (Finance Week, 2005:78-79).

It can be argued that this statement is unreasonable as smaller companies that do not necessarily have the capital required to transform to an empowerment firm and nor do they have the skills required to do so. Therefore, they should not be subjected to the same time constraints as large corporations.

The Mining Charter was formulated by Government to regulate all activities in the mining industry and to ensure that all HDSA will, in the future, be apart of the economically active South Africa. The Codes of Good Practice were formulated to ensure that specific targets are met and that industries that do not have a Charter will be governed with the Codes.
2.9 Codes of Good Practise

The Codes of Good Practise were released for comment in December 2004 for 60 days. All relevant parties gave their comments to the IDC. The purpose of the Code is to standardise all industries' Charters, especially the industries that have not finalised a Charter. Furthermore, the purpose of the Codes is to “assist and advise both the public and private sectors in their implementation of the objectives of the BBBEE Act” (Thale, 2005: 30).

The Codes contains a detailed Scorecard that includes clear targets, weightings and indicators, all of which can be measured. This is an excellent addition, as the Mining Charter does not have exact targets set for mining companies.

The Codes are meant to guard against fronting. Charters that do not reflect the Codes will be illegal. The mining industry has chosen to use the new Scorecard as per the Codes of Good Practise, as their rating criteria. The problem is that some of the Mines' suppliers supply not only them, but other industries as well.

Kevin Lester, a director at a law firm Cliffe Dekker, estimates that there are currently 13 pieces of legislation that “impose ownership, control and management requirements upon enterprises”. The difficulty is that their definitions are vastly different and that only the Act itself narrowly defines empowerment. Lester says that there are two possible solutions to the definition problem. The first, which is almost impossible, is for Government to amend every single empowerment instrument to align with the Codes and Act, and the second is for
the DTI to gazette specific Codes relating to each of the existing empowerment instruments (The right BEE mix, 25 May 2005:3).

The Codes that were released recently will be discussed below.

Table 4: Index to the Codes of Good Practice:

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code 000</td>
<td>Framework for the measurement of broad-based black economic empowerment (BBBEE)</td>
</tr>
<tr>
<td>Code 100</td>
<td>Measurement of the ownership Element of BBBEE</td>
</tr>
<tr>
<td>Code 200</td>
<td>Measurement of the Management Element of BBBEE</td>
</tr>
<tr>
<td>Code 300</td>
<td>Measurement of the employment equity Element of BBBEE</td>
</tr>
<tr>
<td>Code 400</td>
<td>Measurement of the skills development Element of BBBEE</td>
</tr>
<tr>
<td>Code 500</td>
<td>Measurement of the Preferential Procurement Element of BBBEE</td>
</tr>
<tr>
<td>Code 600</td>
<td>Measurement of the enterprise development Element of BBBEE</td>
</tr>
<tr>
<td>Code 700</td>
<td>Measurement of the residual Element of BBBEE</td>
</tr>
</tbody>
</table>
The Codes are categorised from code 000 to code 800 and each Code has its own subsections. This research paper only focuses on Code 500, which is preferential procurement. This by no means trivialises the rest of the codes; they are merely beyond the scope of this research.

Bonorchis quotes Gertenbach as stating that “the Codes were incredibly sophisticated set of legislation”. According to Gertenbach non-compliance with the codes will not be interpreted as breaking the law, there will be no fines or jail terms (Bonorchis, 2005). This might undermine the significance of the Codes.

Three Codes and six Statements were released on the 31 October 2005. As stated by Bonorchis (2005), Code 000 will be covered in the seven Codes still to come; where the General Scorecard and the need for verification of empowerment credentials are set out. Companies have a year to become accredited.

Code 000 Statement 010 shows the gazetting procedure for the transformation process. It also shows that the Codes take precedence if there are any uncertainties about sector-specific codes. Negotiable parts of the Codes are targets and weightings of the seven pillars of BBBEE, but sound economic principles could justify the difference.
Code 000 Statement 020 deals with the process of approving accreditation agencies by the Minister of Trade and Industry. There will be two categories of accreditation, broad-based and narrow-based. Verification certificates will only be valid for one year. Approval by the Minister is required at every step.

Code 100 Statement 100 deals with an Ownership Scorecard and advocates the use of flow-through principle. There are numerous formulas to deal with ownership arising from the sale of equity instruments.

Code 100 Statement 101 shows what type of transaction qualifies as empowerment. Formulas are also provided here.

Code 200 Statement 200 shows the scorecard. The Codes are inline with that from the King 2 Code, on corporate governance, and the Employment Equity Act. Bonus points will be awarded for black independent non-executives directors (Bonorchis, 2005:5)

The Codes have created uncertainty and many empowerment deals have been put on ice because under the current Codes companies earn less empowerment points for all factors on the Scorecard (Singh et al. 2005:18).

Introduction of the Codes will mean that companies will need new accounting systems; new internal processes and that they will generate large reports annually. This could be perceived as a negative aspect of the Codes (Bonorchis, 2005).
The Department of Minerals and Energy (DME) have offices in every province. The mining companies have to adhere to the Charter and the Petroleum Act which is enforced by the DME on a national basis. A problem, identified through extensive discussions with the relevant experts, shows that certain regional officials at the DME office, in some provinces have been less than co-operative in helping with the transformation process. Even though a mining companies invest considerable amounts in local regions, personal attitudes and feelings come into play. Many of the mining companies in South Africa have operations scattered across the country and each operation has a different Department of Minerals and Energy office to which it must report. Unfortunately, there seems to be little standardization within the Department of Minerals and Energy.

Another issue that came to the fore in these discussions was that mining companies are not allowed to pool their resources to assess the community needs and then invest collectively. A specific community in the Northern Cape is case in point. The community had all the mining companies operating in the area build two schools, but no clinics. The result was two half empty schools and sick people travelling for kilometres to get medical treatment. If mining companies were allowed to pool their resources this type of problem could be eradicated. The Department of Minerals and Energy needs to revisit this part of their policy. Recommendations will also be made in the relevant chapter of this research. Currently, should mining companies pool their resources; they will not receive any points on the Scorecard.
Another problem is that the Mining Charter’s definition of historically disadvantaged South Africans includes white women and disabled white people, but they are not included in the definition set out in the Codes (Singh et al, 2005:20).

The current Minister of Trade and Industry Mandisi Mpahlwa stated that black economic advisory council established by the BBBEE Act of 2003 would conduct a review and table recommendations to the President of South Africa and Parliament. The council would review whether the Codes of Good Practice “should be discontinued” at the end of the ten year period (South Africa. Parliament, 2005).

The Minister also stated, “the codes have been developed taking into account the important aspect of attracting foreign direct investment”. Codes have been developed for multinationals regarding ownership as part of the implementation of the Codes. (South Africa. Parliament, 2005.)

Codes addressing the question of skills, including employment equity, will be released as the second part of the Codes (South Africa. Parliament, 2005).

If sectors were left to devise their own sector Charters, South Africa would end up with more than 30 empowerment charters each having their own variations (Radebe, 2005:68-69).
2.10 Black Economic Empowerment Scorecard

The Scorecard is designed to facilitate the application of the Charter in terms of the Mineral and Petroleum Resources Development Act requirements for the conversion of all the “old order rights” into new rights within a five year conversion window period, but recognising the full ten-year period. The following are important notes on the Scorecard as identified by Mordant (2003).

1. The mining company’s commitment to offering each employee the opportunity to become functionally literate and numerate.

2. The mentoring of empowerment groups refers to that mining company’s HDSA employees and HDSA linked partners at the levels of ownership and procurement.

3. The aspirational target for HDSA participation in management in a 5-year period. If companies want to convert licences within a much shorter time frame, then a phase-in approach will be adopted with companies to a 40% HDSA participation by the fifth year.

4. The aspirational target for female participation in mining is a five-year target and the phase-in approach will be used.

5. The stakeholders’ commitment to ensuring non-discrimination against foreign migrant labour.

6. In terms of the company’s measures for improving the standard of housing, the company will be required to indicate what has been done to improve housing and to show a plan implementing and outlining the issue over time.

7. The company’s measures for improving the standard of nutrition.
8. In terms of the procurement, the mining company should commit to an increase of procurement from HDSA companies over the 3 to 5 year time frame and agree to a monitoring system.

9. The Scorecard represents the five year targets and it has been agreed that within 10-years the level of HDSA participation will rise to 26%.

10. In terms of beneficiation commitments and the offset option, the key issue is to capture the actual beneficiation activities of a company and to convert it to the same unit of measurement of ownership.

The Generic Scorecard was formulated for the Codes of Good Practice and assigns the following weightings to the indicators. All seven of the pillars for Broad-based Black Economic Empowerment are visible with a clear indication of points that a company could earn if indicators are met.

Table 5: Generic Scorecard indicators and respective weightings

<table>
<thead>
<tr>
<th>INDICATORS</th>
<th>WEIGHTINGS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership</td>
<td>20 points</td>
</tr>
<tr>
<td>Management Control</td>
<td>10 points</td>
</tr>
<tr>
<td>Employee Equity</td>
<td>10 points</td>
</tr>
<tr>
<td>Skills Development</td>
<td>20 points</td>
</tr>
<tr>
<td>Preferential Procurement</td>
<td>20 points</td>
</tr>
<tr>
<td>Enterprise Development</td>
<td>10 points</td>
</tr>
<tr>
<td>Residual Element (including Corporate Social Investment)</td>
<td>10 points</td>
</tr>
</tbody>
</table>
Deviations in excess of 10% from the weightings contained on the Scorecard are not permitted. The Scorecard sets a target comprising of 40% for black persons in management and allocates a weighting of 10% to management control.

Based on overall performance in terms of the Generic Scorecard, a company will be evaluated and categorised into one of the following BEE statuses and recognised at the corresponding BEE recognition level.

Table 6: Contribution and BEE recognition levels

<table>
<thead>
<tr>
<th>Contribution Level</th>
<th>Qualification</th>
<th>BEE recognition level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level one Contributor</td>
<td>≥ 100 points</td>
<td>135%</td>
</tr>
<tr>
<td>Level two Contributor</td>
<td>≥ 85 points but &lt;100</td>
<td>125%</td>
</tr>
<tr>
<td></td>
<td>points</td>
<td></td>
</tr>
<tr>
<td>Level three Contributor</td>
<td>≥75 but &lt; 85</td>
<td>110%</td>
</tr>
<tr>
<td>Level four Contributor</td>
<td>≥ 65 but &lt; 75</td>
<td>100%</td>
</tr>
<tr>
<td>Level five Contributor</td>
<td>≥ 55 but &lt; 65</td>
<td>80%</td>
</tr>
<tr>
<td>Level six Contributor</td>
<td>≥ 45 but &lt; 55</td>
<td>60%</td>
</tr>
<tr>
<td>Level seven Contributor</td>
<td>≥ 40 but &lt; 45</td>
<td>50%</td>
</tr>
<tr>
<td>Level eight Contributor</td>
<td>≥30 but &lt; 40</td>
<td>10%</td>
</tr>
<tr>
<td>Non compliant</td>
<td>&lt;30</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Department of Trade and Industry (2005)
All the points shown in the qualification column are points on the Generic Scorecard. It is apparent from the table that if a company has more than 100 points on the Generic Scorecard that it will then receive a 135% BEE recognition. As points on the Generic Scorecard decline under qualification column, so do the percentages of BEE recognition percentages that a company would receive.

The danger of the Scorecard is that it gives more weight to ownership and control than it does to skills development, which in turn will lead to companies only diversifying as to not lose state business (Jammie, 2004).

The rationale behind ranking organisations according to the Scorecard is to distinguish between what is described in the Codes as “narrow based BEE”, which focuses solely on ownership and management, which may lead to fronting, and broad–based BEE that covers all the elements of the Scorecard.

In terms of the Scorecard, companies that comply with the criteria will earn 20 points for preferential procurement. Mining companies need their suppliers to be acknowledged as empowered firms to increase their empowerment quota.

The similarities between the mining and financial charter will be highlighted in the next section.
2.11 Similarities between the Mining Charter and the Financial Charter

South African firms are obliged to report their financial results to the International Financial Reporting Standards (IFRS). “The aim of the IFRS is to create a single, cohesive set of accounting standards that can be applied worldwide” (Whitfield, 2005: 14). The problem arises when an employer gives shares or options to employees, because this must be put through his books as an expense on his income statement. However, it must now be decided whether options given to employees in empowerment deals be accounted for in the same way.

The accounting standards, which will be issued soon, will govern the financial statement effect of empowerment deals, which could reduce the earnings of companies that complete such transactions (Right BEE mix, 25 May 2005:7).

There are number of different ways that empowerment deals can be financed. The National Empowerment Fund (NEF) was established in terms of a 1998 Act of Parliament to create a trust for the promotion and facilitation of ownership of income-generating assets by historically disadvantaged persons. A commitment of R10 billion from the national treasury for empowerment has been set aside. The National Empowerment Fund will be discussed in detail in section 2.19 on page 64 of this research.
Other forms of funding are the Industrial Development Corp (IDC) and the Public Investment Commission (PIC). BEE approvals amounted to a third of the IDC’s total funding, or R2.1 billion, in 2004. Since 1990 the IDC has financed more than 625 empowerment deals worth more than R5.6 billion (Mahabane, 2004: 81-82). If a new entrepreneur needs to raise funds the IDC makes it possible; the entrepreneur only needs to raise 2.5% of their own capital to ensure funds of R1 million from the IDC (Finance Week March 2004:81-82).

The PIC entry into BEE financing has been controversial, as the PIC was using Government employee pension funds to invest in BEE deals. PIC aim is to promote empowerment deals where BEE partners are operational and to ensure that those partners can sustain their businesses in the long run. PIC’s name will be changing in the near future to Public Investment Corp, which will be governed by a board of directors and will no longer have commissioners.

Mr. Peter Schmid, managing partner at Actis is concerned that empowerment-financing structures that attract high financing costs are in fact a form of disempowerment (Right BEE mix, 25 May 2005:14). This is problematic as ordinary entrepreneurs will not have access to the necessary capital, and if they were in the position to acquire financing, paying off a huge capital outlay with exorbitant interest repayments would be detrimental to the initial decision to embark on an empowerment deal.
2.12 **The Mineral and Petroleum Resources Development Act 28 of 2002**  
*(The New Act)*

The new Act was formally published in the Government Gazette on the 10 October 2002. However, this Act will not come into effect until a date is determined by the President by proclamation in the Gazette. The Minerals Act No.50 of 1991 “the current Act”, is therefore still in effect.

The current Act presumes that mineral resources are privately owned resources as opposed to the new Act, which is based on the principle that minerals are natural resources and the right to prospect them should be vested by the State. The current Act allows multiple applications for a mining permit for the same piece of property. Once a prospecting permit is granted, no other application will be considered by the DME (Levitt, 2004)

The new Act sets out the process of conversion from “old order rights” to “new order rights”. New order rights are often referred to as “use it or lose it” and are similar to systems employed in Australia and Canada. It was implemented to prevent unreasonable hoarding of mineral rights. In the past, mining companies would purchase a piece of mineral rich land, but would never mine that area, nor would they sell it to another mining company. This was done as a precautionary measure to ensure that once the area that they were busy mining was depleted they would have a “back-up” operation to move on to (Levitt, 2004).
One of the reasons for the delay in giving effect to the new Act is that three other items are required to complete a workable system. These are the regulations that give effect to the Act, a separate Act dealing with financial aspects and, lastly, an Act setting out new provisions for the registration of mining titles (Levitt, 2004).

South Africa has numerous Acts that govern the mining industry to ensure that this profitable industry is not abused. The Preferential Procurement Act is important to this research as it forms the basis of the regulatory framework in which mining companies must operate.

2.13 Preferential Procurement Policy Framework Act, 2000

This legislation introduces the concept of a points system, which is to be applied by all “Organs of State” when awarding tender contracts. The Act “seeks to actively promote the inclusion of HDI/PDI into the mainstream of the economy and endorses activities which further the goals of RDP” ANC (2001). Government spends billions of rands every year on procurement and this Act ensures that government contracts are awarded to previously disadvantaged South Africans, so that they too can be actively involved in the economy of this country.

When evaluating a tender, all Organs of State are required to apply a point’s preference system (the 80:20 points system applies to tenders under R500 000 in value) based on the following:

- Tenderer obtains 80 points if the tender price is the lowest.
• The tenderer obtains a maximum of 20 points for achieving specific empowerment objectives, which must be clearly detailed and specified in the tender document.

• These objectives must be measurable and quantifiable and it must be possible to monitor their compliance.

A 90:10 points system will similarly apply to tenders above R500 000 in value. The Act encourages large corporations to sub-contract work to HDI/PDI entrepreneurs, to fuel co-operation between white and black businesses and reward the transfer of skills.

It is important to note that there are different phases in preferential procurement. These will be discussed in the next section.

2.14 Phases of Preferential Procurement

Three phases of preferential procurement have been identified. The first phase can be best described as the "dazed and confused" stage. Trust and personal relationships play an important role in the corporate buying environment. When BEE first came into play, corporate buyers had to drop established and trusted suppliers in favour of emerging black suppliers. Buyers soon realised that preferential procurement was here to stay (Reddy, 1998).
The second phase could be called the “database phase”. Some entrepreneurial types managed to sell list of names for thousands of rands to procurement managers. The problem with this was that databases quickly became outdated. During this phase, companies debated about what constitutes an affirmaxable business. The Corporate SME Development Forum was established in order to have one consolidated database of all suppliers in the Gauteng region. Some of the reasons for the failure of the forum are that corporate companies saw it as too costly, it was badly administrated and there was a constant influx of emerging businesses (Reddy, 1998).

The third phase was called the “post-database phase”. The databases have been abandoned and age-old buying tactics have come into play, these include face-to-face contact, haggling, trust, intuition and long-term personal relationships (Reddy, 1998).

Classification of suppliers relates to the definition of preferential procurement, whereby the classification of suppliers become vital when awarding an empowerment contract.
2.15 Classification of suppliers

A “black company” is one that is 50.1% owned and managed by black people. Ownership refers to economic interest. Management refers to executive directors. This company will receive an “A” rating for accreditation purposes, allowing it to qualify for set-asides and a 15% price preference.

A “black empowered company” is one that is at least 25.1% owned and managed by black people. This company will receive a “B” rating for accreditation purposes, allowing it to qualify for set-asides and a 10% price preference.

A “black influenced company” is 5 to 25% owned and managed by black people. Such a company will receive a “C” rating for accreditation purposes and a 5% price preference. This company will not qualify for set-asides.

An “engendered company” is one with at least 30% representation of black women within the black equity and management portion.

Companies in any of the above three categories, with at least 30% representation, will receive another 5% price preference. An “engendered black company” will get a 20% price preference and an “engendered empowerment company” will get 15% price preference.
To qualify for any of the above preferences and ratings, companies must submit a number of regulatory documents and policies such as SARS returns, Employment Equity plans and proof of adherence to bargaining council agreements. (South Africa. ANC, 2001).

The following table shows the different types of commodities that would be supplied to a mining company, showing the relevant complexity and impact that the said commodity would have on the mine.

Figure 1: Classification of suppliers

This table illustrates four different types of commodities: bottlenecks, strategic, routine and leverage.
Bottleneck commodities are high in complexity and low on impact meaning that the commodity is complex but the impact on the mine is low.

Strategic commodities are high in complexity and high on impact to the mine, for example machinery used on the mines, without these manufacturers of machinery the mine’s production would be effected. Routine commodities are low in complexity and low on impact, for example basic stationary or toilet paper. Finding the right supplier for this commodity is not crucial.

Leverage commodities are low in complexity and high impact, an example being safety equipment.

Finding the right supplier for these commodities is very important to the mine. On certain products, like routine commodities, the price is important and other factors, such as quality and safety, are not as important. On the other hand, with strategic commodities it is critical that quality and safety be the most important deciding factor when choosing a supplier.

2.16 Obstacles to Black Economic Empowerment

The following issues were identified by the ANC as obstacles to achieving real economic empowerment.

- A lack of commitment to real change by all parties.
• Opportunistic dishonesty, that tends to ride the wave of Government redress, for self interested parties.
• Black individuals or groups fronting for white establishments that wish to do business as usual.
• Rent-a-black schemes for the specific purpose of securing Government contracts or business.
• Black auditioned companies obtaining Government contracts and immediately selling them.
• Blacks using whites and visa versa.

All these points defeat the real goal of empowerment and diminish the foundation for genuine transformation.

Obstacles to real empowerment are to be avoided. The next section deals with the requirements set out by the ANC for a successful procurement programme.

2.17 Requirements for successful Preferential Procurement Programme

There are four requirements for a successful Preferential Procurement Programme as identified in a report released by the ANC (2001).

Firstly, top management must support the Preferential Procurement Programme and show their commitment by endorsing the programme. Secondly, the programme must be aligned with the company’s strategic objectives. Thirdly,
companies should actively contribute to the country’s economic growth and development, taking into account South Africa’s history of inequality. Finally, companies need to be endorsed by organizations that focus on the accreditation processes.

All these points are crucial to success; a synergy needs to exist between preferential procurement and the goals and strategies of the company to ensure that preferential procurement succeeds.

2.18 Strategic importance of Preferential Procurement

Preferential procurement is vital to the successful implementation of transformation in South Africa, and so the ANC (2001) compiled a list of strategic factors of importance:

- Ensures competitive diversity of suppliers and will contribute to the value added on goods and services.
- Preferential Procurement assists with the transfer of skills and technology through joint ventures, outsourcing and subcontracting.
- Develops entrepreneurial potential by benefiting HDI suppliers.
- By benefiting BEE suppliers, it contributes to job creation.
2.19 Financing Black Economic Empowerment participation

It is important to note that for BEE deals to be sustainable and viable; all parties involved should pay for the portion of the black economic empowerment deal being awarded to them. Without this, there is no profitable business opportunities will be created and the economic growth of South Africa can not be ascertained. One of the principles limitations to meaningful transformation is the fact that very few people can afford to start their own business, as they lack the capital.

Various methods are used to finance black empowerment deals, those that relate to the South African context will be discussed below.

The logic behind Debt Finance and Project Finance is that dividends or cash flows of the underlying assets or project will be able to finance the interest on the debt.

Asset Securitization comes into play when BEE enterprises want to raise finance by using some of the income producing assets which it owns.

Convertible Debt or Convertible Debentures can be used when a project is expected to yield consistent cash flows. This can be converted into ordinary shares or preference shares at a given price at a future predetermined date. This is a popular way of raising funds.
Preference Shares give their holders an entitlement to a fixed dividend, but do not carry voting rights. These shares get a fixed dividend, that if not paid will accrue. These shares are paid out before any other shares issued by the company.

Domestic and International listings on various stock exchanges is a very attractive way of raising funds for possible BEE deals.

Four sources of domestic funding support BEE initiatives in South Africa. They are the New Africa Mining Find (NAMF), Industrial Development Corporation (IDC), International Finance Corporation (IFC) and the National Empowerment Fund (NEF).

NEF was set up eight years ago and, up until recently, has been labelled as the DTI most dismal failure due to poor investment records, mismanagement and corruption. The DTI recapitalised the fund with R2 billion earlier this year. The NEF receives 1000 applications a month for financial support. At the end of the financial year, 31 March 2005, a mere R25 million was committed to 11 investments, but never disbursed. “A reason for this failure of both commercial and Government funding of BEE deals is the fact that people given the responsibility for sourcing and approving funding terms are given performance and risk targets like a normal commercial financial institution” (Booysen and Bouche, 2005b: 57). The original aim of the fund was to allow black South Africans to buy shares in restructured state-owned enterprises through the creation of unit trusts. Shares worth R1 billion in companies such as Denel, MTN.
Eskom, ACSA and Telkom will soon be transferred to the NEF from the national treasury, where they have been warehoused (Jacks, 2005: 46).

The Financial Services Charter has ensured that financial institutions make funds available at affordable rates, but whether this will be successful is questionable (Booysen and Bouche, 2005b:57).

The researcher believes that if funds were more accessible and entrepreneurs were in a position to start their own business or start a joint venture with an existing company, fronting would decrease.

2.20 Fronting

Fronting or window dressing is a practice that helps falsify BEE credentials. Fronting is still very prevalent in South Africa. Gauteng premier Mbhazima Shilowa stated that “a contract obtained through fronting should be considered to have been fraudulently acquired and punishable by law”

In a recent article that appeared in the Engineering News journal the Department of Public Works plans to submit names of fifteen companies, some of which are listed on the JSE to the National Prosecuting Authority (NPA) for criminal investigation following a probe into BEE fronting activities. A probe by the empowerment verification firm VerifySolutions found that over a two year period
from 2003 to 2005 more than R440 million had been awarded to at least 15 companies that presented themselves as black owned or empowered companies.

Recently a firm has been charged with fraud after it was discovered it had secured a multi-million rand deal to supply sirens to the police service. It listed a black woman who sells sweets and cakes from a backyard room as a 49% shareholder in the company. The woman was paid a sum of R1000.00 to spend seven days at the company’s offices.

2.21 Key success factors needed for successful implementation of Black Economic Empowerment

Lusengo (1993:43) is of the view that in order to enhance Black Economic Empowerment, a consortium of employees and management who are now owners and co-owners of the company can implement the following:

- The adoption of a strategy to implement affirmative action;
- The establishment of trust funds to give employees financial assistance with health, education and housing;
- Active involvement in social enrichment programmes; and
- The formulation of guidelines for employment creation.

During a BusinessMap presentation on 31 March 2004, the following six key success factors, as depicted in figure 2, are required to make transformation work, these are:
From figure 2, it is evident that the success factors needed for BEE are all linked together in a cyclic manner, and that all impact on one another. For BEE to be successful, a new company culture needs to be established and agents of change need to be identified. Clear and open understanding will improve the chances of successful of BEE. This can be achieved by having various workshops.
SME sector will be the engine for future economic growth. SME are also possible targets for many BEE players seeking equity deals. Pressure comes into play when companies need to procure goods and services from empowered companies to meet their own empowerment requirements. SME are then often faced with costly ultimatum of either transforming or losing their business (Booysen and Bouche, 2005a: 46). Additionally, these authors point out that forcing SME to give up control or sell is a “bitter pill” to swallow. Recommendations made to ensure that small to medium enterprises remain meaningful contributors are that SMEs should be educated regarding black empowerment, and that assistance must be provided on how to introduce a black empowered partner (Booysen and Boucher, 2005a: 47).

Points highlighted by Booysen and Bouche should be taken into consideration to ensure that the right BEE partner is chosen;

- Be in the same industry,
- Understand the industry in which the SME operates,
- Know what challenges and opportunities are faced by the industry,
- Bring synergies and possible diversification opportunities,
- Have the potential to grow the organisation,
- Possess the necessary qualifications or industry experience,
- Have business acumen,
- Be able to add long term value,
- Bring other competitive advantages,
- Assist in transforming the SME,
- Identify new growth areas and strategies and
• Contribute at management and operational level.

(Booysen and Bouche, 2005b:58)

If these points are adhered to, SMEs will have a very positive future in South Africa.

From the literature review, it is clear that BEE, the Codes of Good Practice and Preferential Procurement are hotly debated topics and that many authors have voiced their opinions. The literature review listed the history of BEE and then examined the current perceptions of BEE in South Africa. There are numerous benefits and shortcomings to empowerment and these need to be taken into consideration. The Mining Charter and the Financial Charter should work together harmoniously to ensure that empowerment deals concluded enrich of HDSA/HDI/HDP. The different Acts that regulate this industry were discussed. Phases of preferential procurement and classification of suppliers were discussed with the obstacles and the requirements for a successful empowerment drive. Preferential procurement is of strategic importance and that is why Government has supported this so fiercely.

The following chapter will focus on the design of this research, including the interviews schedules that were used in this research.
3.1 Research Methodology

Five mining companies were used as part of a case study analysis. The data collection was qualitative in nature and consisted of literature reviews. The technique used was semi-structured in-depth interviews.

Phase 1: In the first phase of the study, the historical method, literature review, of data collection was the research methodology chosen to contribute towards the understanding of different aspects of preferential procurement as part of Black Economic Empowerment.

During the first phase of the study, information was gathered using the internet as a research tool. The explorative study was based on a literature review of previous research done in the field of Black Economic Empowerment.

Sources of information will include:

- Journal articles
- Books
- Publications
- Electronic journals
- Internet searches
- Documentation from various support services institutions.

These information sources all formed part of the literature review conducted.
Furthermore, Government documents such as Charters, Codes and Acts were analysed to ascertain what Governments’ thoughts on BEE and to understand what the Government has envisioned for the future. The government and the DTI policy documents were reviewed to understand which policies and structures have been put into place, and to gain insight into how they are implemented.

Archives and documentation of the five mining companies were scrutinised to familiarise the researcher with their past behaviour and to achieve an overall understanding of the companies’ culture and their perceptions of Black Economic Empowerment, and hence Preferential Procurement.

Research was conducted on the internet to explore the history and current dynamics and perceptions of Black Economic Empowerment as viewed by different experts and business practitioners.

It is important to note that this literature based study is not free of bias, nor is it a completely accurate representation of all conditions in Preferential Procurement. Therefore, a concerted effort was made to consult a wide variety of sources of data and information including, documentation and archives from relevant and credible institutions.

Phase 2: was used as primary data in this research. The second phase of the study was in-depth interviews. These were semi-formal, face-to-face interviews. Open-ended questions (see Appendix A) were asked in order to gain a detailed
understanding of this topic. Furthermore, the participants were encouraged to add any information and suggestions as they saw fit.

The unit of study was the mining industry. In a conference held by the South African Mining Development Association (SAMDA), it was stated that the South African Mining Preferential Procurement Forum had enlisted 19 mining companies that have 11596 suppliers collectively, of which 1 800 are HDSA and their total annual procurement budget is estimated at R30 billion (Radebe, 2004). According to the SAMPPF, there are 89 mines in South Africa, including open cast, underground and surface mines.

The second phase of the study was to interview five (5) large mining companies’ in South Africa. These companies were identified by discussions with the South African Mining Preferential Procurement Forum (SAMPPF) as leading companies in South Africa, and the respondents chosen were identified as experts in the field.

One of the companies, BHP Billiton is foreign owned. The other four companies are all South African owned. There appears to be no general agreement on the sample size in qualitative studies. It was felt that five participants should be able to supply varied and detailed accounts for the purposes of this study and the companies identified are major stakeholders in the South African economy.

For the purpose of this study, it would not have been feasible to use random sampling, as the managers currently responsible for the preferential procurement
departments would need to be interviewed to get their opinions and thoughts. The companies chosen to participate in this research report were suggested to the researcher by the General Manager of Information and Reporting at the South African Mining and Preferential Procurement Forum (SAMPPF). As indicated, the companies selected have invested in preferential procurement and are currently large and influential companies in South Africa. There are no pre-testing options available to this research report as respondents were not tested, they were selected on the basis of the company they work for and the expertise and position they hold in each company. Non-probability sampling was used, as the sample was not randomly selected and none of the members had a non-zero chance of being included. The respondents were selected by means of the purposive sampling method.

The objective of the interview was to gain an in-depth understanding of preferential procurement from both sides of the coin; therefore, mining companies and their respective suppliers were interviewed. In addition, this research intends to highlight possible opportunities and challenges that suppliers now face and it aims to include their thoughts and practices on the Codes of Good Practice.

The respondents were interviewed using a semi-structured interview schedule with open-ended questions. This allows both parties to deviate and pursue an idea in more detail (Endacott, 2005). The interviewees were also encouraged to offer their opinions and perceptions about the current business situation (Yin, 2002).
The questions used in the interview, schedule (A), with the mining companies were formulated after numerous lengthy discussions with SAMPPF to establish which topics could be researched.

The main method of data collection was through interviews held with the following people:

- Managers of preferential procurement departments at the five mining companies.
- Interviews with five current suppliers, ranging from listed companies to small and medium enterprises and family owned business. The respective mining companies produced a list of their current suppliers who have successfully managed to implement the Scorecard criteria and those companies that have battled with the implementation.

It was necessary to have two different interview schedules, one for the mining companies and a separate one for the suppliers. This was done to identify possible opportunities and challenges that the suppliers encounter. Furthermore, the researcher wanted to determine the current perceptions on the Codes of Good Practice in order to make meaningful recommendations.

Interviews with the five mining companies were conducted using the semi-structured interviews as provided in appendix A. The mining suppliers were interviewed telephonically as their geographical positions span across South Africa, the interview used for the suppliers is provided in appendix B.
For the most part the two interview schedules were different, but both schedules included a question about the Codes of Good Practice. This was done to establish whether there was a clear understanding of what these codes meant.

A sample of five mineral mining companies, excluding sand and quarry mines, and four suppliers, two that have successfully transformed and two that have not yet transformed, were invited to take part in this study.

The respondents were asked to discuss what they saw as problems and opportunities in relation to the Codes of Good Conduct. They were also asked to make their own recommendations that they felt would improve the final draft of the Codes of Good Practice.

3.2 The population

The sample demographics were mostly homogeneous. Out of the five mining company representatives interviewed, four were white gentlemen and one was a black gentleman. All the representatives interviewed were between the ages of 35 and 55. The only woman interviewed was between the ages of 35 and 40. All the interviewee’s have had numerous years of experience in Black Economic Empowerment or Preferential Procurement.
3.3 Discussion of the advantages and disadvantages of personal interviews

The advantages and disadvantages of personal interviews, according to Cooper and Schindler (2003), are as follows:

Table 7: Advantages and Disadvantages of personal interviews

<table>
<thead>
<tr>
<th>ADVANTAGES</th>
<th>DISADVANTAGES</th>
</tr>
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<tbody>
<tr>
<td>Good cooperation</td>
<td>High Costs</td>
</tr>
<tr>
<td>Interviewer can probe for answers, use follow-up questions and gather information by observation</td>
<td>Need for highly trained interviewers</td>
</tr>
<tr>
<td>Special visual aids can be used</td>
<td>Longer period needed in the field collecting data</td>
</tr>
<tr>
<td>Interviewer can pre-screen respondents to ensure that he/she fits the profile</td>
<td>May be a wide geographic dispersion</td>
</tr>
<tr>
<td>CAPI – computer-assisted personal interviewing</td>
<td>Not all respondents are available or accessible</td>
</tr>
<tr>
<td></td>
<td>Questions may be altered or respondent coached by interviewer.</td>
</tr>
</tbody>
</table>

Source: Adapted from Cooper & Schindler

It is clear from the table that there are many advantages and disadvantages to personal interviews, but the researcher felt that the advantages outweighed the
disadvantages and that for the purposes of this study it would be the best possible qualitative method to use. In most cases, the researcher found that the disadvantages were not applicable, as costs were kept low. The researcher is also skilled at conducting interviews. The researcher had planned for time constraints and therefore started the data collection very early. The disadvantage of geographical distribution was overcome as all the large mining companies have their headquarters in Johannesburg. The supplier interviews were conducted telephonically. All the respondents were approached at the onset of this research and the SAMPPF informed the respondents of the intent of this research. The questions were not altered in anyway by the researcher during the interview process.

3.4 Interview Schedule and data collection for the Mining companies (see Appendix A)

The interview process was preceded by a telephone call. Apart from arranging the logistics of the interview, the telephone call served to introduce the topic to the potential participant. This, together with an introductory letter, served to stimulate the interviewee’s thoughts about the issue in advance.

A limited number of subjects were dealt with to encourage detailed responses with full attention from the interviewees (Rubin & Rubin, 1995). This interview schedule consists of eighteen questions. All respondents were interviewed by the researcher on different occasions, as these interviews were conducted at their
offices and at a time most convenient to them. After every interview, the recordings were transcribed to ensure that the researcher recalled any particular behaviour. The transcribed interviews were then sent back to each company for approval from the appropriate people, this was done due to the sensitivity of this study. No changes were made to the initial interviews.

The interview schedule was formulated in a structured manner with open-ended questions.

The first section of the interview served to introduce the study, thank the participant for their time and obtain some background information on the company. The sample respondents were orientated and given a brief description of the purpose of the study and its potential benefits. The respondents were guaranteed confidentiality before the interview started. The first two questions were asked to ensure that the respondent’s position was with the mining company and to establish how long they held the position. This was to verify if they were indeed experts in this field.

The respondents were then asked what their definition was of preferential procurement and what their companies wanted to achieve with their preferential procurement policies. These questions were important as they helped the researcher gain an understanding of each company’s view on this topic to understand each individual company’s perceptions on this topic. The next questions related to how these large companies were helping their suppliers transform in order for them to reach their procurement targets.
It was realised in the initial interviews with the South African Mining Preferential Procurement Forum (SAMPPF), that fronting still occurs and that is the objective of the SAMPPF to accredit all suppliers to the mining industry. The initial interview schedule contained questions on the topic of fronting.

One of the questions posed was to try and identified the mine’s BEE spend for the last five years.

Question 16 was important, as the basis of this report is to understand the current perceptions of the Codes of Good Practice.

Question 18 dealt with what the respondent believed a transformed mining industry would look like. This question tried to identify how the respondent supposed the industry would look in the future.

At the end of the interview the respondents were asked if there was any other relevant information that could be added to this interview to ensure that all topics were covered. They were also asked to offer their recommendations.

The interview was concluded by thanking the respondent for his/her valuable contribution and time.
3.5 Interview Schedule for the mining company supplier (see Appendix B)

The mining companies were asked to identify five companies that have successfully transformed and five that have had some degree of difficulty. The names and contact details were supplied by the mines. Some of the names listed were not available and could not be reached for comment. For this reason, only four respondents were included in the research. Two had successfully transformed and two were having some degree of difficulty.

The first three questions relate to the nature of the company’s business, where their head office is situated, including all branches they may have and whether they source their products in South Africa. These questions were asked to determine whether these suppliers are located at the coal face of the mine and whether they needed to import the products that they supply.

The following three questions pertained to whether the company is black empowered, black owned or black engendered and what the equity distribution is. Furthermore, it was necessary to establish how long they have been supplying the mines and what their spend was with that supplier.

It was important to establish whether training was given to these suppliers by the mine to help with their transformation, and if so what was done.

The next question related to whether or not the company believed that Government or any other institution could assist in the transformation process.
The last four questions tested to see if the interviewee understood the Scorecard and the Codes of Good Practice; and whether they felt any amendments could be made to the final draft of the Codes.

The interview was concluded with thanking the respondents for their time and contributions.

### 3.5.1 Sample demographics

These interviews were done telephonically due to the vast geographical distances of the suppliers. This could be viewed as disadvantage as true feelings could not be judged. All four suppliers interviewed were male and varied in age from 30 to 45. Two respondents were white and two were black.

### 3.6 Method used for data analysis

There is no single method of analysis in qualitative research; but there are various ways of analysing the large corpuses of unstructured data. The chosen method depends on the researcher’s background, study purpose, the research strategy, etc. (Mehmetoglu and Altinay, 2005: in press).

The recognised approach is the content analysis method. According to Cooper and Schindler (2003), content analysis measures the semantic content of a message. It is a flexible and a wide-ranging tool that can be used as a problem specific-tool. It is also referred to as a research technique for the objective,
systematic, and quantitative description of the manifest content of a communication, Cooper and Schindler (2003), citing Berelson (2000).

Coffey and Atkinson (1996) offer the other approach, it consists of three separate analytical strategies: concepts and coding; narratives and stories; and finally meanings and metaphors (Mehmetoglou et.al. 2005)

In this paper, the content analysis approach was followed, which forms part of Grounded Theory. Content analysis is a systematic technique for analysing message content and message handling and is a tool for observing and analysing the overt communication behaviour of selected communicators, as cited by Kassarjian (2001).

The interview transcripts were read by the researcher and were coded according to the grounded theory approach to data analysis (Burnard, 2003).

In other grounded theory literature, it is noted that it is the researcher who finds and generates the category system (Burnard, 2003). After an intensive review of literature on qualitative data analysis, it was felt that grounded theory would be best methodology for this research.

The data obtained from the interview schedules and the literature review is aimed at proving these research propositions as either true or false.

- Mining companies are eager to assist in the transformation process and have undertaking large projects with Historically Disadvantaged South Africans (HDSA) as referred to as Previously Disadvantaged Individuals (PDI) or Historically Disadvantaged Individuals (HDI) to ensure that their procurement targets are met.
• Fronting is still a problem in the mining industry and mining companies have taken very serious steps to ensure that this phenomenon is eradicated.

• HDSA suppliers to the mining companies do not understand what the Codes of Good Practice will achieve once they are gazetted.

• Mining companies are reluctant to disclose their current and past BEE spend, as this will set a high benchmark for the coming years.

• At certain local levels, Department of Minerals and Energy (DME) are less co-operative in helping to establishing partnerships with the mining companies in the area.

The chosen method used analyse the data will form the basis of the actual investigation of the data.

The preceding chapter dealt with the formulation of the interview schedule including the population and sample of the respondents. The next chapter will contend with the analysis of the data.
CHAPTER 4: ANALYSIS OF INTERVIEWS, THEMES AND SUMMARY

The findings in interview schedule A will first be examined and then the findings in interview schedule B will be studied. Combined and convergence themes will be discussed. All of the interviewee’s are highly skilled and have been employed in a procurement capacity for more than four years. Two of the interviewee’s have been involved in procurement since 1989.

4.1 Interview analysis of mining companies

4.1.1 Possible definitions of Preferential Procurement

All of the interviewee’s believed that preferential procurement could assist in redressing the past imbalances and to give the majority of the country’s people a fair chance to do business with the mining giants. One respondent pointed out that HDSA included white women and now BEE excludes white women from this definition.

4.1.2 Objectives to be reached with procurement policies

All of the mining companies’ respondents wanted to achieve sustainable economic development and help create competitive vendors who can add value to South Africa’s economy and help create jobs. One respondent was quoted as saying “if this is not done we could have an economic revolution which would lead to economic destruction”. Two companies noted that they wish to be good
corporate citizens and wanted to help uplift the communities in which they functioned.

4.1.3 Level of pressure on non-BEE companies to transform

One company stated that they have indirectly put pressure on their suppliers to adhere to the Mining Charter. Another company insisted that for some commodities that there are BEE set-asides. One of the interviewee’s stated “it does not make sense in other sectors to start up BEE companies, that is why transformation of existing companies is so important, to increase BEE spend, and ensure that we simply do not replace a white supplier with a black supplier as that would not be a good thing either” One interviewee has training sessions with the top 40 vendors per site, where the Mining Charter is explained and feedback received on any transformation plans these vendors may have.

4.1.4 Measures in place to ensure transformation

Most of the companies have put BEE procurement strategies and guidelines in place. Three of the companies indicated that Key Performance Indicators were in place and that incentives were in place. One company cited “to achieve BEE spend and I think that an important issue here is that our BEE spend was the initial focus and now we are saying is what you measure is what you get. I guess it is a bit of a numbers game instead of trying to achieve meaningful transformation across our complete supply chain we tended to go for some of the big deals to push our spend up, we have profiled our supply base and it does not necessarily correspond with that and we are aware of that and we need to improve on that”
4.1.5 Industries targeted for compliance

All the mining companies have targeted industries across the board and applied the same pressure to all commodity suppliers and services. One company stated that their targets are set for each of their three categories, namely services, commodities and capital goods. A different respondent stated that there are set-asides for the following categories; welding services, labour-hire, domestic cleaning and civil construction. Set-asides mean that certain amounts of BEE spend for a particular commodity or service is reserved for a specific BEE supplier.

4.1.6 Compliance pressure in various industries

All companies replied that the same pressure is applied to all industries. One respondent said “we need to create an approach that is consistent with running an effective business, but also achieving programmes around that. Another respondent stated “they do add more pressure in areas that fall behind our target and monitor this regularly. We look at areas that have no HDSA spend and formulate a strategy to interact with communities and businesses to create sustainable development”.

4.1.7 Level of compliance by suppliers

All the companies responded by saying that suppliers, for the moat part, have transformed but that there are mixed feelings. One company stated, “listed companies feel that if HDSA want ownership they must buy shares in the company via the Stock Exchange” The three main reasons identified by all the companies as inhibiting the transformation process is a shortage of skills/
intellectual property, a lack of capital and international shareholding. A respondent was quoted as saying “there are constraints, in that certain vendors are having problems in identifying the right HDIA partners. Financial support is a concern and in-house we are working closely with Anglo American’s Zimele programme”.

4.1.8 Measures in place to ensure fair chance of success at coal-face
One respondent believed that is was a pertinent issue and stated that “actually breaking the category up into lots of suppliers and might have been 10 million rand in value in spend has been split up against dozens of suppliers where they only have a little piece of the cake, so in essence what you are creating is condemning them to always be small” Three of the companies indicated that buying is done at the mine itself. The other two companies buy centrally.

4.1.9 Annual BEE spend
This question was very sensitive and the researcher was advised by one of the company’s respondents not to ask this question. Two companies made this information available, but asked for it to be kept anonymous. It is evident from the interview schedules that the entire mine’s BEE spend has increased over the last 5 years by 15% on average. It must be noted that the recording of BEE spend was only implemented in 2004 with the start of the Mining Charter.
4.1.10 *Procurement companies that have successfully complied and those having difficulties*

Three companies supplied these details and two did not. Names and contact details were supplied by two companies, which enabled the researcher to contact them.

4.1.11 *Deciding factors when choosing a new supplier*

One respondent stated the following “we do not pay premiums to support HDSA vendors, we assist in all areas and sound commercial principles will underlie all transactions, there will be no compromise on quality, price, delivery, service, safety, health and environment nor any other commercial or technical requirements”. All the other companies were inline with this.

4.1.12 *Audit processes for new and existing suppliers*

All five companies subscribed to the SAMPPF and one company subscribed to another two companies, EMPOWERDEX and EZZIDEX.

4.1.13 *Prevention of unethical practices*

Only one of the respondents replied, “We do not have the resources to do our own accreditation checks” The other four companies stated that they have their own “audit committee” that ensures that their technical specifications are met. One company even stated, that “They do spot checks at the company to see if HDSA do really make up part of the ownership quota”
4.1.14 In-house process to prevent unethical practices
All companies have some sort of internal process. Two of the companies’ supply chain practitioners check that the suppliers meet their technical and commercial requirements. A third company has site visits by the accreditation department, the status of which is confirmed by the supplier by means of a signed affidavit. The last company sends out appraisal questionnaires.

4.1.15 Current perceptions on the Codes of Good Practice
The general impression is that the Codes are very good and well constructed and that they look at the bigger picture. It is felt that once they are implemented they will eliminate confusion and standardize charters.

4.1.16 Amendments to the Codes of Good Practice
Two companies stated that inputs had been given to Government and were not prepared to discuss these with the researcher. One respondent stated that “Codes should be more practical and easy to use, we have done some forecasting and it would take 6 to 8 man years to reconfigure our current systems as our database will have to change which will be very costly”. Another respondent was of the opinion that the speed with which Government had implemented this could be detrimental due to current trend of putting possible black empowerment deals on hold to wait for other changes. Furthermore, the issue of practicality was raised.
4.1.17 Resembles of a transformed mining industry

One company stated that they would like to see more HDSA ownership of mining assets and that they were currently selling a portion of their company to HDSA. Another company stated, “The industry is representative of the demographics of South Africa and that women will be actively involved in the economy”.

4.1.18 Summary of Interview A

There is a general agreement of what the objectives of preferential procurement are and ways in which these could be addressed. All the companies interviewed felt very strongly about fronting and the negative perceptions that this caused. All the respondents subscribed to an accreditation firm to assist in combating fronting. The consensus around the Codes of Good Practice was that this would improve the objectives of BBBEE. Some respondents believed that certain amendments could be made to the Codes.

4.2 Findings in Interview Schedule B

Only four companies could be reached for comment, two have successfully complied and two are having difficulties with compliance.

4.2.1 Summary of questions one to seven

The first seven questions were tabled for ease of analysis.


<table>
<thead>
<tr>
<th>Question</th>
<th>Company 1</th>
<th>Company 2</th>
<th>Company 3</th>
<th>Company 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature of business</td>
<td>Hydraulic cylinders &amp; pumps</td>
<td>Safety equipment</td>
<td>Electric motors</td>
<td>Specialised mining equipment</td>
</tr>
<tr>
<td>Head Offices</td>
<td>Johannesburg</td>
<td>Johannesburg</td>
<td>Johannesburg</td>
<td>Johannesburg</td>
</tr>
<tr>
<td>Source of products</td>
<td>Produce locally and import</td>
<td>Import all products</td>
<td>Produce locally and import</td>
<td>Produce locally and import</td>
</tr>
<tr>
<td>Equity Distribution</td>
<td>Black owned</td>
<td>Black empowered</td>
<td>No compliance – listed company</td>
<td>In process of complying with internal employees</td>
</tr>
<tr>
<td>Years of supplying said mine</td>
<td>1 year</td>
<td>3 years</td>
<td>20 years</td>
<td>7 years</td>
</tr>
<tr>
<td>Annual spend</td>
<td>R18 million</td>
<td>R900 000</td>
<td>R 20 million</td>
<td>R5½ million</td>
</tr>
<tr>
<td>Assistance with transformation</td>
<td>N/A</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
</tr>
</tbody>
</table>

4.2.2 Imposing of various empowerment strategies

All the companies stated that no ultimatum was given to them by the mine in question. Certain mines have tried to coach and train them in processes, such as tendering procedures.

4.2.3 Measures in place to ensure success of empowerment strategies

Their personnel have been on training to help obtain successful tender projects.

4.2.4 Training programmes instituted by mining companies

All companies responded positively to this, but said that the workshops were focussed mainly on discussing what the Mining Charter is and explaining how to conform.
4.2.5 Possible assistance provided by mining companies and Government

Company 1 found this question did not apply. Company 2 stated the following “because of the low margins, mining companies should be prepared to pay premiums”. Another thought was that mines should look into dropping the settlement discount that they all insist on, if the mine settles within 30 days they demand a 2.5% settlement discount and 2.5% if invoice is paid COD. This is posing a problem for the smaller companies.

4.2.6 Understanding of the Scorecard

For the most part, the respondents understood what it was all about, but could not give a clear definition of the Scorecard. Three out of the four did not know that there is a new Generic Scorecard in the Codes of Good Practice.

4.2.7 Most important element of Broad Based Black Economic Empowerment

Two of the four companies believed that Preferential Procurement was the most important. One company believed that more emphasis should be given to skills development and that the last company had no opinion about this question.

4.2.8 Understanding of the Codes of Good Practice

The four companies had very little understanding of what the Codes meant. It is clear no information has been given to suppliers yet. This could be due to the fact that it is still in the draft phase.
4.2.9 Impact of the Codes on suppliers

The answers were hesitant and it was plain that they see no benefits of the new Codes. The respondents were of the opinion that the Codes were “fancy” but not practical. One respondent was concerned about the Government’s stance on SME, and whether they would be excluded from the codes.

4.2.10 Summary of Interview B

The consensus among the respondents is that certain forms of assistance should be made available to suppliers. Overall, however, they did not believe that the implementation of the Codes would benefit their companies.

4.3 Integration of interview schedules A & B

The overall outcome of the interviews conducted was that there is still some work to be done in educating and training businesses about the Mining Charter, the Codes and the Scorecard. There seems to be dissimilarity in the levels of enthusiasm showed for the Codes of Good Practice. The mining companies are of the opinion that the Codes will be predominately beneficial, whereas the mining suppliers are adamant that the Codes will be detrimental to their businesses. The researcher believes that if suppliers were educated about the positive aspects of the Codes, they would be more compliant and they may even be inclined to transform faster.
From the interview schedules, it is clear that Government, a sign of good faith, needs to address the issues of SME, old-order rights, funding and fronting.

Chapter 5 identifies some recommendations based on the above findings and is followed by a conclusion section.

4.4 Discussion and integration of data and theory

The Democratic Alliance leader, Mr. Tony Leon recently stated that “we must ask why South Africa should have to carry the ideological burden of our racial past into our economic future, when successful developing nations such as China and India are moving ahead precisely because they are leaving past mistakes behind and adopting new economic strategies”. Leon proposes key ways to reform BEE policies these are as follows; firstly to simplify BEE and that all of the different charters, laws and codes be condensed into one clear set of rules. Secondly, broad-based BEE should focus for example shares ownership schemes rather than selling BEE stakes to a handful of investors. Thirdly, BEE should be flexible that if companies complied with earlier BEE requirements should be exempted from any new ones. Lastly, if companies found it too difficult to comply or to meet specific BEE goals that they should have an option to renounce by paying a reasonable fee into a trust that would in turn be used to provide bursaries to black students (Leon, 2005).
According to Tyler (1997) and Scholtz (1986), red tape, access to capital, skills development and management capabilities are major barriers to the entrepreneur.

Changes have been made to the Income Tax Act and the Government has done away with Capital Gains Tax on BEE transactions where the SME is sold into a business where at least 70% of the shareholders are the owners of the SME (Booysen and Bouche, 2005b:58). This is a positive change for the entrenchment of SMEs future in South Africa.

The Codes of Good Practise were released for comment in December 2004 for 60 days. All relevant parties gave their comments to the IDC. The purpose of the Code is to standardise all industries Charters especially for those industries that have not finalised a Charter. Furthermore the purposes of the Codes are to “assist and advise both the public and private sectors in their implementation of the objectives of the BBBEE Act” (Thale, 2005: 30).

The Codes of Good Practice are meant to guard against fronting and from the discussions with the experts from the mining companies it is clear that fronting is still very prevalent in this industry. A study done by accreditation firm VerifySolutions found that over a two year period from 2003 – 2005 more than R440 million had been awarded to contractors that have used fronting to obtain these contracts. From this it is very clear that the final codes need to address this to ensure that real empowerment is achieved.
It was noted by a director of a law firm that Government needs to amend every single empowerment instrument to align with the Codes and the Act and secondly for the DTI to gazette specific codes relating to each empowerment instrument (The right BEE mix, 25 May 2005:3). This will decrease the confusion amongst companies and individuals with regards to which code or charter to follow.

There are numerous benefits and negatives of empowerment and the most beneficial point is that it creates increased personal power and sense of self-efficacy (Dodd and Gutierrez, 1990) and increases the abilities to achieve full personal potential (Crawford, 1995:78). This is very important considering South Africa’s past and to ensure that South Africa and all of its residents have a meaningful and sustainable future. It is evident from the interview schedule with the mining company supplier’s that these suppliers do not believe that enforcing the codes and empowerment strategies would be beneficial to their existing firms. For Government to be successful with the implementation of the codes, they must ensure that all stakeholders are aware of the benefits and the consequences for non-compliance; this could be done through education for example work shops.

It is apparent from the theory stated in chapter two that the mining industry will use the Mining Charter as its base mark from which to ensure empowerment. The reason for this is that the Mining Charter was gazetted and thus, law. Mining companies have until 2009 to convert old-order mining rights and if this is done these rights will be lost to the Government (Smith, 2005). This is problematic as mining companies are forced to comply with sometimes unreasonable
expectations, this could possibly lead to mining companies either leaving South Africa or not investing in the first place (Ryan, 2005b:62).

It was clear from the literature obtained that in October 2004 more than 3000 holders of mineral and mining rights gave notice of their intention to sue Government under the Institution of Legal Proceedings Action (Ryan, 2005b:62). In a recent article it was acknowledged that mining companies that were affected refused to talk on record for fear of being victimised by the DME, which could harm their businesses (Ryan, 2005b:62).

Whether these companies will go ahead with these proceedings are not clear but from this it is apparent that mining companies are loosing patience with Government.

The ANC has identified a number of obstacles against achieving real economic empowerment. It is clear from the interviews conducted, that not all parties are committed to real change nor do the suppliers see the benefits that this might bring to their companies. Fronting was highlighted as a problem by blacks and whites in South Africa, and unfortunately both parties to fronting only see the short term benefits of this. Hopefully the Codes will address these issues and ensure that this unfortunate practice seizes.

 Preferential procurement is fundamental for successful transformation in South Africa, as it ensures competitive diversity of suppliers. Furthermore, it assists in the transfer of skills and technology through joint ventures, outsourcing and
subcontracting, and ultimately contributes to job creation (ANC, 2001). This is shown in the interviews conducted that the mining companies and suppliers agree with the importance of preferential procurement and that it is one of the most crucial drivers for empowerment.

The next chapter will delve into recommendations for Government, mining companies and lastly mining suppliers, followed by conclusions drawn from this research.
CHAPTER 5: RECOMMENDATIONS

The following recommendations pertain to mining companies, suppliers of mining companies and last but not least the South African Government.

5.1 Government

The following are points that Government could investigate to ensure that empowerment reaches its full potential and the people it is meant to empower.

Government needs to re-look at Corporate Social Investment (CSI). The mines, in order to get points on the Scorecard, have to contribute to the area in which they mine. This means that mines from the same area each contribute to the community individually. By not being able to pool their resources and jointly assess the community needs, the mines often work at cross purposes and resources are wasted. For example, a community may end up with two half empty schools and no clinics instead of a school and a clinic. The Department of Minerals and Energy could adopt a policy of not looking at actual physical buildings, but at the overall enrichment of the community whether it was made possible by one or many mines. Government and mining companies can dovetail their strategies by meeting and collectively deciding what a community needs and how they can achieve this.

It is very important for mining companies to take responsibility for all the successes that they have had in South Africa and to put in now what they have
taken out for so many years this includes Corporate Social Investment (CSI) and skills development. The general feeling about skills development and training is that companies do not want to train and empower their staff as once they are trained they will leave the firm for greener pastures. The researcher disagrees with this, because if you treat your staff well they will have no reason to leave. On the other side of the coin, mining companies are expected to do so much for the economy and its people, that were do they draw the line.

What has been noted is that some companies and Government institutions have “hi-jacked” ideas for political gain. When small and medium enterprises approach Government institutions for the funding for a brilliant business concept, these Government officials either take the idea as their own or start their own business supplying the mining companies.

All regional Department of Minerals and Energy offices are different, the broad framework is synergized but the mining company needs to comply with local Department rules and regulations. Some Department of Minerals and Energy offices are reluctant to help in the transformation process. All regional Department of Minerals and Energy offices should have all policies and procedures standardized to ensure that all mining companies in all the provinces are treated in the same manner.

A further recommendation is that no clear targets are set for Preferential Procurement in the Mining Charter, hopefully with the conclusion of the Codes of Good Practice this issue will be dealt with. If clear targets are set, then mining
companies will be able to monitor their Preferential Procurement purchases to determine whether targets are met, and if not what the possible problems could be.

During the interview process companies were reluctant to share their BEE spend for the last five years with the researcher. This is possibly due to; if the mining company discloses this information openly and accurately they have set the benchmark quite high and will have to increase the BEE spend in the preceding years. If the spend is not increased this will be easily noticeable and mining rights may be withheld.

Fronting needs to be addressed and the researcher is convinced that this issue will be noted in the final drafts of the Codes of Good Practice. A more rigorous approach should be taken. Only checking documentation is not good enough, unexpected site visits should also be encouraged. Supply companies should possibly sign an affidavit stating that they are truly an empowered firm. Mining companies should ensure that before they give a supplier a vendor number that he has signed an affidavit or contract stating that he is indeed an empowered company. With this document, mining companies can ensure that fronting is minimised.

The Codes are meant to guard against fronting. Charters that do not reflect the Codes will be illegal. The mining industry has chosen to use the new Scorecard as per the Codes of Good Practise as their rating criteria. The problem arises that certain suppliers to the Mines are not only supplying them but to other industries
too, so which Charter should they adhere too? That is a possible loophole in the Codes.

Government should try to simplify and be more flexible with different scenarios, this does entail more administrative work and more man hours, but these mining companies are far too important to South Africa to vindicate these companies.

5.2 Mining companies

These recommendations relate to foreign owned companies. These companies do not have to be present in South Africa as their products can be imported to South Africa. Government must be wary of being too demanding on mining companies as they can literally pack up their operations and leave South Africa.

Foreign owned companies based in South Africa will not score points on the Scorecard for issues pertaining to ownership. These issues need to be addressed by possibly reformulating a clause that exempts foreign owned companies and guarantees that they will not lose the possibility of receiving or renewing their mining licenses.
5.3 Mining suppliers

A company looking for BEE partners expect the new partners to be able to pay fair market value for their share in this business. This is problematic as most of these individuals do not have the necessary capital and if a loan needs to be acquired and that in turns means that the return on the investment has to service the loan and interest redemption.

There is an assumption that black suppliers deliver inferior quality, cause lengthy delays and that they are generally unprofessional in how they conduct business with clients. This sometimes forces smaller business quote very low prices in order to be considered for the work. This is a vicious cycle, which starts with poor margins that lead to poor control, which will ultimately impact on quality. Another variable is trust. Black small and medium enterprises do not trust corporate buyers to treat them fairly and vice versa. This perception will change once a new culture instils itself in companies, and long standing relationships are formed.

Currently, small and medium enterprises are included in the Mining Charter Scorecard and the Generic Scorecard of the Codes of Good Practice. The researcher is of the opinion, after many discussions with the relevant people, that small and medium enterprises should be excluded from these Scorecards or that a different Scorecard should be formulated for them. Small and medium enterprises cannot be expected to conform to all seven pillars of both Scorecards. This was pointed out by two of the mining companies’ respondents. Small and
medium enterprises are reluctant to sell some of their business to an equity partner.

New entrepreneurial entries will be rigorous because ownership structures and financing methods will be scrutinised by both supporters and critics of black economic empowerment. Skills development and a possible change in culture belief are crucial for this entrepreneur to be born.

All these recommendations are based on findings in the literature reviews and interviews conducted.

5.4 Conclusions

South Africa has come a long way since its first democratic elections in 1994. Many milestones have been reached and many hurdles still need to be overcome, but with a sound Government and policies in place there is no reason why this can not be achieved. It must be noted that Broad-based BEE cannot and will not be achieved overnight and that perseverance is the only answer.

More and more companies and individuals are buying into this concept and past inequalities are being addressed.

This paper highlighted some issues around Preferential Procurement and makes certain recommendations as to how these issues can be resolved.
The Codes of Good Practise make specific comments on the inclusion of black women and disabled persons to encourage BBBEE. The problem with this inclusion is that mining companies adhere to the Mining Charter and the Charter takes precedence over the Codes. The Charter includes white women in their definition of HDSA so there is a discrepancy between white and black females. The mining industry employs many people so this discrepancy could lead to black women not being included in affirmative action.

It is clear from the literature review that certain amendments should be made by Government to ensure that there is a standardised policy, to which all companies must adhere too. Government on the other hand must also be willing to look at each circumstance individually, as SME cannot be expected to adhere to the same standards as set for large corporations.

Government must be cautious of the fact that there are currently legal proceedings in place against them from locally based companies. This could possibly spread to international companies. These international companies are quite capable of leaving our shores and starting exploration in countries that do not have such stringent requirements for the start-up of a business as South Africa.

The Government is being “forceful” because they are aware that the minerals in South Africa will be depleted within the next decade and so want to ensure that as many HDSAs are in a better position than they were ten years ago.
Government must ensure that possible foreign investors are not anxious about this and decide not to invest in South Africa.

Governments should be willing to assist companies, whether large or small, in establishing a business and should not be as authoritarian in the bureaucracy that is required for starting a business.

The past inequalities are still visible in South Africa’s landscape, but more and more companies are realising the benefits of BBBEE and are more willing to comply with most requirements set by Government, as long as they are reasonable.

Booysen, 2005 states “We have travelled so far on our journey of transformation that we are another nation, however we still have so much learning and unlearning to do that the journey has but just begun” (Booysen, 2005).
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# APPENDIX A

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<tr>
<th>Name of Interviewee</th>
<th>Date and Time of Interview</th>
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<tr>
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<table>
<thead>
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<table>
<thead>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## INTERVIEW SCHEDULE

1. How long have you worked in the said position?

_________________________________________________________________

2. How would you define Preferential Procurement?

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

3. What does your company want to achieve by their Procurement Policies?

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________
4. To what extent has your company insisted that current non-BEE companies transform to your Procurement policies?

5. What measures has your company put in place?

6. What industries has your company targeted to comply with BEE transformation? Example service industry i.e. repairing of components?

7. Is the pressure equally applied for companies to comply, operating in these four different supply industries namely; Service Industry, Manufacturing Industry, Critical Safety Industry, Supply Industry?
8. Do you believe that your suppliers have complied; if not please state why you think this has not happened?

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

9. Once a supplier has a vendor number and he starts canvassing at the mine itself, what steps are in place to ensure that he has a fair chance with those people, as long standing relationships do come into play?

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

10. What has your BEE spend been in the following years including the budgeted figures; 2001, 2002, 2003, 2004, 2005?

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

11. Can you recall 5 procurement companies that have successfully transformed including companies that have had difficulty?

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________
12. What is the most prominent deciding factor when choosing a new supplier?
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

13. Has your company subscribed to external accreditation firms to audit new and existing suppliers? If so, please mention the company name?
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

14. If your company has subscribed to an accreditation firm, and they conduct an audit with a supplier and give the supplier BEE accreditation are there other measures in place from your company to audit these suppliers to prevent unethical practices such as fronting and window dressing?
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

15. If your company uses in-house processes could you please explain these?
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
16. What are your perceptions on the Codes of Good Practice?

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

17. Do you believe that certain amends could be made to the Code?

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________

18. In your point of view what will a transformed mining industry look like?

_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
_________________________________________________________________
### INTERVIEW SCHEDULE FOR CURRENT SUPPLIERS

1. **What is the nature of this business?**

   __________________________________________
   __________________________________________
   __________________________________________
   __________________________________________

2. **Where is your head office, are there other branches?**

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   __________________________________________
   __________________________________________
   __________________________________________

3. **Do you manufacture or source your products locally?**

   __________________________________________
   __________________________________________
4. Could you please indicate if your company is black empowered, black owned or please indicate the equity distribution?

5. How long have you been a supplier for the said mine?

6. What is the said mining company annual spend with your company?

7. Has the said mine offered any form of training or assistance with transformation?
8. Has the said mining company imposed various empowerment strategies for your company to comply with?

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9. If the answer in the above question is yes, what measures have you put in place to achieve this?

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10. Has the said mining company giving any form of workshops or training to help you in the transformation process?

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11. What do you believe could be done to assist your company in the transformation process on all levels including Government and your customers?
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12. What is your definition of Scorecard?
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13. What aspect of the Scorecard do you believe is the most important element to achieve Broad Based Black Economic Empowerment?
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14. What is your understanding of the Codes of Good Conduct?

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15. Do you believe that the Codes will be beneficial or detrimental to your company?

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