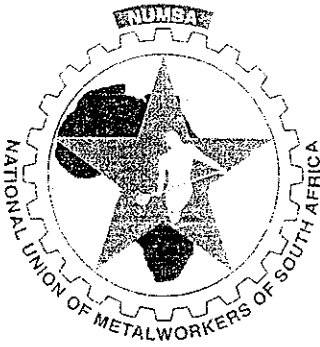


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NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA

Parliamentary Office

Unit UA57-59 4<sup>th</sup> Floor  
No. 6 Spin Street  
Cape Town CBD  
8001

Telephone: 021 - 4612923  
Fax: 021 - 4617546  
E-Mail: [woodya@numsa.org.za](mailto:woodya@numsa.org.za)

04 September 2013

The Honourable Chairperson  
Ms F.C. Bikani, MP  
Acting Chairperson: Portfolio Committee on Mineral Resources  
Parliament RSA

**RE: NUMSA SUBMISSION ON MINERAL AND PETROLEUM RESOURCES  
DEVELOPMENT AMENDMENT BILL [B15-2013]**

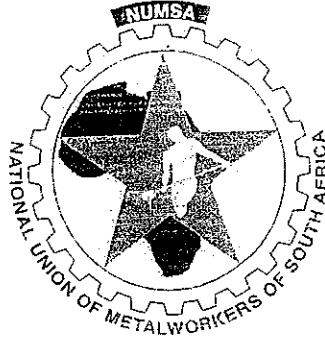
Dear Ms Bikani

The National Union of Metalworkers of South Africa (NUMSA) welcomes the opportunity to submit on behalf of metalworkers, comments on the Mineral and Petroleum Resources Development Amendment Bill [B15-2013].

The union would also like to make a verbal presentation to the Portfolio Committee on Mineral Resources as requested in the notice issued by parliament. Our submission follows this letter.

Yours sincerely

W. Aroun  
NUMSA Parliamentary Office  
Unit UA57-59 4<sup>th</sup> Floor  
No. 6 Spin Street  
Cape Town CBD  
Mobile: 0834615915  
Tel: 021-4612923  
Fax: 021-4617546  
E-mail: [woodya@numsa.org.za](mailto:woodya@numsa.org.za)



**NUMSA SUBMISSION ON MINERAL AND PETROLEUM RESOURCES  
DEVELOPMENT AMENDMENT BILL [B15-2013]**

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## 1. Introduction

The National Union of Metalworkers of South Africa (NUMSA) welcomes the opportunity to submit on behalf of metalworkers, comments on the Mineral and Petroleum Resources Development Amendment Bill [B15-2013].

As NUMSA we have campaigned for more public ownership of our natural resources and argued that beneficiation of our minerals resources is important to sustain industrial growth and create employment. As a union that organises metalworkers in the energy, steel, engineering and associated industries like the motor and automobile sector NUMSA believes that the Mineral and Petroleum Resources Development (MPRD) Amendment Bill will provide the necessary legislative framework to facilitate the implementation of strategies as outlined in the following government policy papers:

- A Beneficiation Strategy for the Minerals Industry of South Africa (DMR)
- The Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (DMR)
- Industrial Policy Action Plan (DTI)

## 2. NUMSA's Position on the MPRD Amendment Bill [B15 – 2013]

### 2.1 Ministerial Advisory Council

NUMSA notes that the proposed amendments call for a repeal of the sections 57-68 of the principal Act (*Act 28 of 2002*) that provides for the establishment of a Minerals and Mining Development Board and matters related to the functions, composition and administration of the board. We also note that the establishment of Regional Mining Development and Environmental Committee (S64 (1) of the principal Act) has been moved to S10 of the proposed amendments while S56 has been expanded to include provisions dealing with the establishment of a Ministerial Advisory Council.

While S23 (2A) gives the Minister power to impose conditions to promote the rights and interests of communities in the event of an application (Granting and Duration of Mining Right) that affects their land, the deletion of **[including conditions requiring the participation of the community]** from the existing clause is likely to put communities in a more vulnerable position. The exclusion of social partners from the Regional Mining Development and Environmental Committee is also noted. While S56A provides for representation from labour and business, the amendment excludes representation from communities and other social formations. NUMSA believes that these exclusions will affect the

credibility of the proposed new structures. Besides, such exclusions are likely to damage the spirit of transformation that the legislation seeks to address.

## 2.2 Fast Tracking Beneficiation (Amendment of section 26 of Act 28 of 2002, as amended by section 22 of Act 49 of 2008)

The issue of beneficiation of mineral resources and its impact on the development of the metals and engineering sector in South Africa has been on the agenda of the union for some time. Figures released by the Department of Trade and Industry (DTI) suggest "that employment opportunities tend to be low at the milling i.e. refinery stage, but can become very high at the mass semi-manufacturing and final production and machine building stages" (Lundall et al. 2008: 8) The following table from the DTI illustrates the benefits of beneficiation:

Nature of product	Selling price per ton of steel (\$)	Employment per 1000 ton of steel	Investment (R million per job)	Stage
Iron Ore	30	0.12	n.a	1
Iron	120	0.6	R2m	2
Hot rolled steel	300	1.1	R6m	3
Cold rolled steel	500	1.6	R8.5m	3
Pipe and Tube	650	7	R1.5m	3
Structural Steel	1000	75	R0.1m	4
White Goods	5000	100	R0.4m	4
Mining Equipment	13000	150	R0.6m	4

Source: [DTI, cited in Lundall et al. 2008:9]

According to the DTI a small percentage of most metals mined in South Africa are beneficiated through to stage 4:

Commodity	Stage 1 Ores/ Concentrates (%)	Stage 2 Processed / Refined Ore (%)	Stage 3 Primary Manufacture (%)	Stage 4 Finished Manufacture (%)
Gold	100	100	5	2
PGM (Platinum Gp of Mts)	100	100	n.a.	5
Iron Ore to Steel	100	30	30	15
Chrome to stainless steel	100	85	9	3

Aluminium	0	100	30	11
Zinc	100	100	90	60
Manganese	100	50	25	22
Titanium	100	15	4	small
Copper	100	100	65	50

Source: [DTI, cited in Lundall et al. 2008: 9]

The table clearly reflects the overall underdevelopment of the downstream metal products industries. In each column it indicates the percentage of a particular metal that reached the stage of beneficiation indicated by the column. For instance, 100 percent of gold mined in South Africa is refined (Stage 2), but only 2 percent is beneficiated into a final product (Stage 4) Developing and growing the downstream higher value-added end of the metals production chain should therefore become a top priority. Great attention and emphasis would have to be given to the skills required to grow this stage of metals beneficiation. (Lundall et al. 2008: 9)

The union is aware that there are other problems that hamper the development of downstream steel production:

- import parity pricing (IPP)
- electricity pricing
- training and development

However, recent developments from the DTI (in a report presented to the PC Trade and Industry on the 15 February 2013) confirm the department's preference for amendments to S26 of the MPRDA to facilitate 'access to minerals for local beneficiation' (DTI: 2013). Briefly, these amendments seek to give the Minister the power to:

- determine the percentage of a mineral resource that must be made available for local value addition
- set a developmental price for the designated mineral/s
- seek written consent from any person who intends to export designated minerals

While NUMSA has advocated and lobbied for the introduction of export taxes on minerals leaving the country, the DTI believes that an amended S26 of the MPRDA will achieve the same effect and contribute significantly to enhance our domestic manufacturing sector. The union welcomes these amendments to S26, although its own policy position on beneficiation remains unchanged. NUMSA will be glad to furnish the PC on Committee Mineral Resources a copy of its internal discussion document entitled *Towards a Metallic Minerals Beneficiation Strategy for South Africa*, May 2012.

## 2.3 Environment

NUMSA notes the amendment to S37 of the principal Act:

All environmental requirements provided for by this Act will be implemented in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998)

Further the repeal of S39 (Environmental management programme and environmental management plan), S40 (Consultation with State departments), S41 (Financial provision for remediation of environmental damage) and S42 (Management of residue stockpiles and residue deposits) of the principal Act (as per the amendments of Act 49 of 2008) confirm the Ministers intention to locate environmental legislation associated with the mining and associated industries firmly under the scope of the National Environment Management Act (NEMA). According to the memorandum (2.13) of the amended Bill the management of mine environmental provisions have been split between the DMR and the Minister responsible for Environmental Affairs; the DMR will assume responsibility for implementation and the Department of Environment Affairs has the been given the overall responsibility 'to develop, review and amend legislation, regulations and policies relating to mine environmental management' (MPRD Amendment Bill, 2013: 41-42). In a press statement released by Adv. De Lange (Chairperson of the PC on Water and Environmental Affairs) on the 13 August 2013 the Department of Environmental Affairs has released a **National Environmental Management Laws Amendment Bill, [B26 -2013]** that 'proposes amendments to certain provisions under the National Environmental Management Act, 1998 (NEMA), the National Environmental Management: Waste Act, 2008 (NEM: WA) and the National Environmental Management Amendment Act, 2008 (NEMAA)' (De Lange, 2013). According to De Lange, the amended NEMA Bill (B26 – 2013) will:

... give effect to the "**One Environmental System**" by empowering the Minister of Mineral Resources to implement environmental matters in terms of NEMA in so far as it relates to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. The Bill further proposes amendments to the NEM: WA to allow the Minister of Water and Environmental Affairs to develop regulations on the environmental management of residue deposits and stockpiles for implementation by the Minister of Mineral Resources.

Since amendments to NEMA are directly related to amendments in the MPRD Amendment Bill, NUMSA believes that there should be a joint sitting of the PC Mineral Resources and the PC Water and Environmental Affairs to ensure that both pieces of legislation are consistent in their application:

- Ensure that transitional arrangements and commencement date are unambiguous

- The DMR has the necessary capacity to implement environmental impact management as well as compliance monitoring and enforcement provisions under NEMA.

## 2.4 Amendments to S98 (Offences) and S99 (Penalties)

NUMSA notes the amendments to S98 (Offences) and S99 (Penalties). The union welcomes these changes. However we are of the view that the fine imposed for contravention of S98 (a) (i) by the insertion of S99 1A is inadequate:

(1A) Should it for any reason whatsoever not be possible to establish the recent annual turnover of any offender as contemplated in section 99(1) with any reasonable certainty or without undue delay, any person convicted of an offence in terms of this act shall then be liable—  
(a) in the case of an offence referred to in section 98(a)(i), to a fine not exceeding R180 000 or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment;

Further, NUMSA believes that the Minister should open a 'name and shame' register for all offenders convicted of contravening the provisions as set out in S98 and withdraw any such license or permit granted to such person/s in terms of this legislation

## 2.5 Guidelines:

### 2.5.1 Guideline for Consultation with Communities and Interested and Affected Parties

NUMSA is aware that the *Act* provides for Guidelines for Consultation with Communities and Interested and Affected Parties. However, a recent article that appeared in the *Mail & Guardian* (30 August 2013) highlights the problems of communities traumatized by mining operations and coerced into giving up their land:

Prospecting for one of the world's largest platinum mines has already taken farming land from a Limpopo community.  
One morning he woke up and walked the few kilometres to the field he had farmed for decades and found a fence had been built around it. Security guards told him to go away. The community's farmlands had become a slimes dam for one of the world's biggest platinum mines ... Today the topsoil, and everything else, is covered with the white dust that blows off the mine. But this is an area with rich earth, where Mofokeng could grow anything from maize and morogo (wild spinach) to beans. Now the villagers have nowhere to farm. (*M&G*, 30 August 2013)

NUMSA believes that legislation should be aligned with the ILO Convention 169-Indigenous and Tribal Peoples Convention, 1989. South Africa is not a signatory to this Convention and to date 22 countries have ratified C169. Apart from its commitment to human and socio-economic rights, *Article 6* of the Convention provides a framework for governments to consult in a meaningful way:



1. In applying the provisions of this Convention, governments shall:

- (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
- (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
- (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures. (ILO, Convention 169)

### **2.5.2 Social and Labour Plan**

The Revised Social and Labour Plan Guidelines require some comment. The tragic events of Marikana compels us to take a closer look at the SLP and to determine whether mining companies are addressing some of the socio-economic issues in the plan with some measure of urgency. While the plan covers a broad range of issues including Human Resources Development Programmes, Mine Community Development Plan, Housing and Living Conditions Plan, Employment Equity Plan, and Processes to save jobs and manage downscaling and/or closure, it is questionable whether measures to monitor and enforce compliance with the SLP are adequate, or have been sufficiently provided for in the MPRD Act. NUMSA believes that DMR should take the following steps to address the issue:

- A overarching policy paper for the mining and petroleum sector should be developed to guide the Minister in the execution of his or her mandate to transform the sector and address the needs of historically disadvantaged persons
- Closer alignment between the SLP, Mining Charter, Beneficiation Strategy and IPAP
- Consider imposing sanctions on companies that fail to meet the objectives as directed by legislation

### **3. Conclusion**

NUMSA believes that the political and socio-economic transformation of our society is necessary to ensure that all South Africans benefit from our abundant reserves of natural resources. As the MPRD Amendment Bill seeks to address these inequalities we are mindful of the fact that ownership patterns of our natural resources are skewed and lie in the hands of big multi-national companies that continue to exploit our natural resources

while the majority of our people live in poverty and hardship. The union will continue to campaign for more collective ownership of our natural resources under state ownership so that the fruits of beneficiation are enjoyed by all.