

# **SUBMISSIONS ON BEHALF OF THE NATIONAL HOUSE OF TRADITIONAL LEADERS ON MINERALS AND PETROLEUM RESOURCES DEVELOPMENT AMENDMENT BILL**

## **BACKGROUND**

Traditional Leaders wish to make the following inputs on the Mineral and Petroleum Resources Development Amendment Bill. Accordingly, the Mineral and Petroleum Resources Development Amendment Bill is a section 76 bill, that is an ordinary Bill affecting Provinces and as such it contains provision to which the procedure set out in section 76 of the Constitution applies.

The NHTL view as a serious drawback, the alleged opinion by the State Law Advisors that the Bill should not be referred to the National House of Traditional Leaders in terms of Section 18(1) of the Traditional Leadership and Governance Framework Act, 2003, as it contains no provisions pertaining to customary law or customs of traditional communities. This begins to raise further questions as to the possibility of other pieces of legislation having a bearing on traditional or rural communities having and continuously being categorized as section 75 bills.

### **1. Amending of definitions**

**Community** means a coherent, social unit or group of persons under the jurisdiction of a local government or traditional council;

**Member of Community** means any person or persons tracing his or her cultural roots of a particular traditional council;

**Beneficiation** includes transformation, value addition or downstream beneficiation of a mineral and petroleum resource (or a combination of minerals) to a higher value product, over baselines to be determined by the Minister, which can either be consumed locally or exported but not limited to:

- (a) Primary stage, which includes any process of the winning, recovering, extracting, concentrating, refining, calcining, classifying, crushing, screening, washing, reduction, smelting or gasification thereof;
- (b) secondary stage, which includes any action of converting a concentrate or mineral resource into an intermediate product;
- (c) tertiary stage, which includes any action of further converting that product into a refined product suitable for purchase by minerals-based industries and enterprises; and
- (d) final stage, which is the action of producing properly processed, cut, polished or manufactured products or articles from minerals accepted in the industry and trade as fully and finally processed or manufactured and value added products or articles.

Deletion of **Labour sending areas** and its definition with the insertion of **preferential employment opportunities** means creation of employment opportunities for mining communities. Labour sending areas is an apartheid system of sourcing labour and

should be discontinued. Preference should be on appointing local rural communities as the source of labour before extending employment opportunities for non-community members.

**2. Insertion of subparagraph j on Section 2 of the Act**

(j) promote and ensure minimum unencumbered net value ownership of the HDSA in mining companies of not less than 26%;

**3. Insertion of subparagraph "e" on Section 47(1) of the Act**

(e) Is in contravention or breach of section 3 of the Amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry.

**4. Proposed amendments on Section 9, 10 and 11**

All applications for licences and related matters (ie prospecting rights, objections etc) must be taken over by an independent body which in our opinion the Bill must give provision for the establishment of such body which should be called the Minerals and Mining Development Council in order to eliminate any future conflict of interest which may arise on those who are vested with powers to make such decisions;

This independent body must handle all matters pertaining to all applications which are currently the responsibilities of Minister, Regional Manager, Regional Mining Development and Environmental Committee and the Ministerial Advisory Council.

Section 9 must make provision that is mandatory for all successful applications for mining to have Community Trusts.

9(1) Deletion of Regional Manager on 9(1) with insertion of Minerals and Mining Development Council;

9(2) Deletion of Minister on 9(2) with insertion of Minerals and Mining Development Council;

10(1) Deletion of Regional Manager on 10(1) with insertion of Minerals and Mining Development Council;

10(2) Deletion of the wording "the Regional Manager must refer the objection to the Regional Mining Development and Environmental Committee to consider the objections and to advise the Minister thereon" with the insertion of "the person so objecting must refer the objections to the Mineral and Mining Development Council for adjudication".

## **5. Proposed amendment of Section 11(3)**

Deletion of section 11(3) in its entirety in that this clause indirectly defeats the purpose of black economic empowerment for the reason and suspicion in our view that black economic empowerment deals that fails we find a situation where the very same transactions which were owned through black economic empowerment are sold back to white mining companies without even the consent and knowledge of the Minister.

It is common cause that most of the current black economic empowerment deals are "ownership with debt" and therefore it is of utmost importance that there be a register on current status of all black economic empowerment deals to ensure that the Minister has knowledge where there is alienation of this deals back to the hands of the white business as result of debts by owners of black owned companies.

Any alienation whether as result of default by black economic empowerment deal must be done only with the consent of the Council and administered by the Minister or the Executive Authority.

## **6. Amendment of 10A, 10B, 10C, 10D, 10E and 10G**

The Regional Mining and Environmental Development Committee must comprise of the Regional Council members as determined by the Mining and Mineral Development Council.

The Minister must seek advice from the Council with reference to regional mining development and environmental committee matters.

#### **7. Section 5A: Prohibition relating to an illegal act**

This clause provides that no person may prospect for or remove, mine, conduct technical co-operations, reconnaissance, operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without giving the landowner or lawful occupier of the land at least 21 days written notice.

Traditional leaders are of the view that no person may commence with any work on an area without consulting the landowner or lawful occupier first.

Traditional leaders further suggest that the notice should be for a period of 30 days as 21 days is too short a notice.

It is therefore recommended that the clause be amended as follows”

“No person may prospect for or remove, mine, conduct technical co-operations, reconnaissance operations, explore for and produce any mineral or petroleum or commence with any work incidental thereto on any area without consulting

and giving the landowner or lawful occupier of the land in question at least 30 days written notice”.

## **8. Section 17: Granting and duration of prospecting right**

Subsection 4A provides that if the application for prospecting right relates to land occupied by a community, the Minister, subject to the advice of the Council may impose conditions to promote the rights and interests of the community including conditions requiring the participation of the community.

Traditional Leaders support this clause but recommend that the word “may” be replaced by “must”. It should be mandatory or obligatory on the part of the Minister, to consult and seek advice from the Council when imposing conditions requiring the participation of the community and it should not be optional.

The National Council must have Regional Councils in Province (Section 56)

## **9. Section 22(4) (b): Application for mining right**

In terms of this clause, if the regional council accepts the application, the regional manager of the Department must notify the applicant to consult with the landowner, lawful occupier and any interested and affected party and include the result of the consultation in the relevant environmental reports.

Traditional leaders recommend that the Department's regional manager must also notify the applicant to consult with the community, if the application relates to land occupied by a community. It is suggested that the clause be amended as follows:

" to consult in the prescribed manner with the landowner, lawful occupier and any interested and affected party, including the community, if the application relates to land occupied by a community, and include the result of the consultation in the relevant environmental reports"

#### **10. Section 23 (2A): Granting and duration of mining right**

This clause states that the Minister **may** impose, if the application for mining right relates to the land occupied by a community, such conditions to promote the rights and interests of the community, including conditions requiring the participation of the community.

It is recommended that the word "may" be replaced by "must" and the Minister must impose after consultation with the Council.



## **11. Section 27(5)(a): Application for issuing and duration of mining permit**

The clause provides that the regional manager must, if he accepts the application, notify the applicant to consult with the landowner, lawful occupier, any interested or affected party

Traditional leaders recommend that the community, on whose land the mining permit is issued, must also be consulted.

## **12. Section 28: Information and data in respect of mining or processing of minerals**

This clause provides that the holder of a mining right must submit the prescribed annual report to the Regional Council Manager, detailing the holder's compliance with the provisions of section 2(d) and (f) of the Amended Broad Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry.

Mine community and rural development requirement are vague. There should be a specific target to be committed to as the bulk of south Africans live in rural areas and should enjoy the benefits of rural projects.

Traditional Leaders support the view that equity participation by communities in the mining industry is important, and that the dividends paid to communities be invested in rural projects.

**13. Section 50 (4) (a): Minister may investigate occurrence, nature and extent of mineral resources**

In terms of this section, the investigation to be conducted on any land to investigate if any mineral occurs, should be done after consultation and notification in writing to the owner, occupier or person in control of the intention to do so.

Traditional Leaders recommend that the traditional communities should also be consulted and notified, if the investigation will be done on communal land.

**14. Chapter 7 of the Act**

Section 104 (2)(d)

Deletion of Section 104(2)(d) with insertion of Section 104(2)(aa) that "The Minister must provide technical and financial resources".

## Clause 104 (4)

The above section must be reviewed in the interest of the community and weighted against cost benefit analysis.

### **15. Amendment of Chapter 7**

Traditional Leaders are of the view that the creation of the Mineral and Mining Development Council should be the function or competency of Parliament through the relevant Portfolio Committee. The appointment members of the Council should include traditional leaders.

#### **The Establishment of the Mineral and Mining Development Council**

Deletion of Section 56A(1) with insertion of "The Portfolio Committee on Mineral Resources must through parliament establish an independent body responsible for administering and processing applications for minerals and mining development resources to be known as the Mineral and Mining Development Council. The said council should be represented in all Regions through Regional Councils, appointed by the Mineral and Mining Development Council.

Deletion of "Director-General" with insertion of and "independent body" on Section 56A(2)(a).

Over and above the three members of the relevant state Department, there should be an inclusion of 1 member appointed by the National House of Traditional Leaders.

## **Functions of Mineral and Mining Development Council**

Deletion of 56B with insertion of "It is an obligation of the Minister to seek advice from the Council".

## **Vacation of office by member of the Mineral and Mining Development Council**

Deletion of section 56D(1)(c) with Insertion of "tenders his or her resignation in writing to the Mineral and Mining Development Council through the relevant parliament portfolio committee and such resignation is accepted; or

Insertion of "The Mineral and Mining Development Council through the relevant parliament portfolio committee may remove member of Council from office and all other resignations and terminations of member should follow the same process." on section 56D(2)